TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1907.

No. 113.

FERDINAND PHILLIPS, PLAINTIFF IN ERROR,

vs.

THE CITY OF MOBILE.

IN ERROR TO THE SUPREME COURT OF THE STATE OF ALABAMA.

FILED OCTOBER 1, 1906.

(20,385.)

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1 A transcript of the record and proceedings had in a certain cause heretofore pending in the City Court of Mobile, Mobile County, Alabama, wherein the City of Mobile was plaintiff and Ferdinand Phillips was defendant.

Complaint for Offense Against City Ordinances.

(Complaint.)

THE STATE OF ALABAMA,
City and County of Mobile:

Personally appeared before me, Joseph N. McAleer, Recorder of the City of Mobile, Alabama, Alfred W. Torranse, License Officer, who on being sworn, doth depose and say that since the 15th day of March, 1904, within the limits of the City of Mobile, Alabama, Ferdinand Phillips violated the License Ordinance of the City of Mobile, by being a dealer in and selling beer by the barrel, half barrel or quarter barrel, within the limits of the City of Mobile, since the 15th of March 1904, without taking out or procuring a license from the City of Mobile to carry on such business. As required by item 28 of said Ordinance. Approved March 15, 1904—and prays for a warrant for the arrest of the said Ferdinand Phillips.

ALFRED W. TORRANS,
License Officer.

Sworn to and subscribed before me this 9th day of May, 1904.
JOSEPH N. McALEER,
Recorder of the City of Mobile.

Warrant.

THE STATE OF ALABAMA,
City and County of Mobile:

To any Police Officer in the City of Mobile:

2 Complaint on oath having been made before me that the offense of violating Section — of Mobile City Ordinances as described in the above affidavit, has been committed, and accusing Ferdinand Phillips thereof, you are therefore commanded forthwith to arrest and bring him before the Recorder of the City of Mobile.

Dated the 9th day of March, 1904.

(Signed) JOSEPH N. McALEER,
Recorder of the City of Mobile.

Filing.

Filed in office February 8th, 1905.
JAMES A. SHELTON, *Clerk.*
1—113

Demurrers to Complaint.

CITY OF MOBILE
vs.
FERDINAND PHILLIPS.

The defendant demurs to the complaint against him in this cause on the following grounds:

First.

Because it states no good cause of complaint.

Second.

Because it does not appear that there is any legal obligation to pay the license for the non-payment of which this prosecution is instituted.

Third.

Because the particular subdivision of the license ordinance fixing the license, for non-payment of which this prosecution is instituted, is null and void.

Fourth.

3 Because the particular subdivision of the license ordinance fixing the license for non-payment of which this prosecution is instituted is unconstitutional and void as a tax upon interstate commerce.

Fifth.

Because the license ordinance for an alleged violation of which this prosecution is instituted, is purely a revenue measure and not an exercise of the police power lawfully delegated; and for aught that appears by the complaint the business taxed by the license, for non payment of which this prosecution is instituted is wholly interstate commerce in original packages.

Sixth.

Because the particular subdivision of the license ordinance requiring the license for non-payment of which this prosecution is instituted is a tax upon interstate commerce in original packages as well as a tax upon local business and is therefore null and void so far as it applies to interstate commerce; and the complaint does not aver that this defendant is engaged in such business other than interstate commerce in goods in the original packages.

Seventh.

Because the particular subdivision of the license ordinance requiring the license for non-payment of which this prosecution is instituted is a tax upon interstate commerce in original packages as well as a tax upon local or intra-state business and is therefore null and void.

Eighth.

Because the charter of the City from which alone the power to levy any license tax is derived provided "That not more than one license under this act shall be assessed against or collected from partners trading or business done under a firm name" and the complaint does not allege that no other license has been paid under the authority of said act by this defendant.

FITTS & STOUTZ,
Attorneys for Defendant.

4 Demurrer to Complaint filed.
VINCENT GIBLIN, *Clerk.*

5/11–1904.
Over-ruled 5/16–1904.

Appeal Bond.

THE STATE OF ALABAMA, *City of Mobile:*

Know all men by these presents, that we Ferd Phillips and Thomas Martin are held and firmly bound unto the City of Mobile in the sum of One Hundred Dollars, for which payment well and truly to be made to the City of Mobile, we do hereby bind ourselves, and our heirs and assigns, jointly and severally, firmly by these presents.

Sealed with our seals and dated the 3rd day of February in the year of our Lord, Nineteen hundred and five.

The condition of this obligation is such, That whereas the above bounden Ferd Phillips has on the day of the date of these presents claimed an appeal to the City Court, next to be held in and for the County of Mobile, in the State aforesaid, at the next Term 1905, thereof, from a judgment rendered on the 3rd day of February 1905 by Joseph N. McAleer, Esqr., Recorder of the City of Mobile and Ex-officio Justice of the Peace, in and for said City against said Ferd Phillips, requiring him to pay said City of Mobile Fifteen Dollars as a fine or serve thirty days imprisonment in the Police Station.

Now, if the said Ferd Phillips, shall appear at said term of said Court, and from term to term until discharged by due process of law, then this obligation to be void, otherwise to remain in full force and virtue.

FERD PHILLIPS. [SEAL.]
THOMAS MARTIN. [SEAL.]

5 Filed in office February 8th, 1905.
JAMES A. SHELTON, *Clerk.*

Complaint.

In the City Court of Mobile, February Term, 1905.

THE CITY OF MOBILE, Plaintiff,
vs.
FERDINAND PHILLIPS, Defendant.

The City of Mobile claims of the defendant the sum of fifteen dollars as penalty, for that whereas, heretofore, to-wit: on February 3rd, 1905, the Recorder of the City of Mobile fined the defendant in the said sum for the violation of the license ordinance of the City of Mobile, approved March 14th, 1904, more particularly subsection 28, which reads as follows: "Breweries, each person, firm, corporation, dealer, brewer, brewery, agent or handler for a brewery, selling beer by the barrel, half barrel or quarter barrel, this clause not to include license for wholesale or retail vinous or spirituous liquors—$200.00." And plaintiff avers that defendant has not taken out the license required by said license ordinance nor has he paid such fine so imposed by the recorder.

B. B. BOONE,
City Attorney, for the Plaintiff.

Filed February 21st, 1905.
JAMES A. SHELTON, *Clerk.*

Demurrers to Complaint.

CITY OF MOBILE
vs.
FERDINAND PHILLIPS.

The defendant demurs to the complaint against him in this cause on the following grounds:

First. Because it states no good cause of complaint.

Second. Because it does not appear that there is any legal obligation to pay the license for the non-payment of which this prosecution is instituted.

6 *Third.* Because the particular subdivision of the license ordinance fixing the license, for non-payment of which this prosecution is instituted, is null and void.

Fourth. Because the particular subdivision of the license ordinance fixing the license for non-payment of which this prosecution is instituted is unconstitutional and void as a tax upon interstate commerce.

Fifth. Because the license ordinance for an alleged violation of which this prosecution is instituted, is purely a revenue measure and not an exercise of the police power lawfully delegated; and for aught that appears by the complaint the business taxed by the license, for non-payment of which this prosecution is instituted is wholly interstate commerce in original packages.

Sixth. Because the particular subdivision of the license ordinance requiring the license for non-payment of which this prosecution is instituted is a tax upon interstate commerce in original packages as well as a tax upon local business and is therefore null and void so far as it applies to interstate commerce; and the complaint does not aver that this defendant is engaged in such business other than interstate commerce in goods in the original package.

Seventh. Because the particular subdivision of the license ordinance requiring the license for non-payment of which this prosecution is instituted is a tax upon interstate commerce in original packages as well as a tax upon local or intra-state business and is therefore null and void.

Eighth. Because the charter of the City from which alone the power to levy any license tax is derived provides "that not more than one license under this act shall be assessed against or collected from partners trading or business done under a firm name" and the complaint does not allege that no other license has been paid under the authority of said act by this defendant.

FITTS & STOUTZ,
Attorneys for Defendants.

Refiled to Complaint filed in City Court this 22nd day of February, 1905.

JAMES A. SHELTON, *Clerk.*

7 *Order, Demurrers to Complaint Overruled.*

At a regular term of the City Court of Mobile, Mobile, Alabama, begun and held on the first Monday in February A. D. 1905, the same being the *same being the* sixth day of said month, and on the 22nd day of February A. D. 1905, the same being a regular day of said term it was ordered and adjudged as follows, to-wit:

THE CITY OF MOBILE
vs.
FERDINAND PHILLIPS.

This cause coming on to be heard this day upon the demurrers to the Complaint and said demurrers having been argued by counsel and duly considered by the Court It is ordered and adjudged that said demurrers be and they are hereby overruled.

Plea.

CITY OF MOBILE
vs.
FERDINAND PHILLIPS.

Comes the defendant and for plea herein, states that this defendant is not guilty of the matters and things charged against this de-

fendant in the plaintiff's complaint, and that the plaintiff should not recover as claimed in the complaint, because of the following facts:

Because the particular subdivision of the license ordinance prescribing a license, for the non-payment of which this suit was instituted, is unconstitutional and void, as a tax upon interstate commerce so far as it applies to this defendant; and this defendant says that between March 15th 1904 and the date of the institution of this suit this defendant dealt in beer by the keg only in original packages, of such goods manufactured in a state or states other than Alabama, sold to this defendant by a non-resident of Alabama, and shipped from the place of manufacture from points outside of Alabama to the city of Mobile. That said packages were the ordinary, usual and customary packages in which said goods were customarily packed for sale and transportation, and that this defendant is advised that such acts constitute interstate commerce, which is
8 not taxable by the state of Alabama, or any of the municipal subdivisions thereof, merely for purposes of revenue; and that the license ordinance referred to in the complaint is a revenue law, and not a law enacted under the police power; and that except as hereinabove stated, this defendant is not and has not been since March 15th, 1904, a dealer in, nor has this defendant sold, beer in any manner, fashion or quantity, with- the limits of the city of Mobile, Alabama.

FITTS & STOUTZ,
Attorneys for Defendant.

Second. That this defendant has for the current fiscal year beginning March 15th 1904 and ending March 14th 1905, and under the same ordinance described in the complaint paid another license demanded of him by the City of Mobile for conducting his business carried on by this defendant: said license having been issued for the purpose of carrying on the business of retail beer dealer.

FITTS & STOUTZ,
Attorneys for Defendant.

Third. In short by consent "Not Guilty."

FITTS & STOUTZ,
For Def't.

Filing.

Filed Feb'y 22nd, 1905.

JAMES A. SHELTON, *Clerk.*

Demurrer to Second Plea.

City Court of Mobile, February Term, 1905.

CITY OF MOBILE, Plaintiff,
vs.
FERDINAND PHILLIPS, Defendant.

Comes the plaintiff and demurs to the second plea of the defendant pleaded in this cause, because it presents a matter of law and not of fact for the determination of the jury.

B. B. BOONE,
City Attorney, for the Plaintiff.

Filed February 22nd, 1905.
JAMES A. SHELTON *Clerk.*

9 *Order: Demurrers to Second Plea Sustained.*

And on the 22nd day of February, A. D. 1905, the same being another regular day of said term of said City Court of Mobile, it was ordered and adjudged as follows:

THE CITY OF MOBILE
vs.
FERDINAND PHILLIPS.

This cause coming on further to be heard this day upon the demurrers of the Plaintiff to the second plea of the defendant and said demurrers having been argued by counsel and duly considered by the Court It is ordered and adjudged that said demurrers to said second plea be and they are hereby sustained.

Verdict.

And on the 22nd day of February, 1905, the same being another regular day of said term of said City Court of Mobile, it was ordered and adjudged as follows:

THE CITY OF MOBILE
vs.
FERDINAND PHILLIPS.

This day came the parties by their Attorneys and issue having been joined between the parties thereupon came a jury of good and lawful men to-wit: Walter G. Horn and eleven others who having been duly empannelled and sworn according to law *who* having heard the evidence and the charge of the Court say on their oaths "We the Jury find the defendant not guilty." It is therefore considered by the Court and is so adjudged that said defendant go hence with his costs in this behalf expended.

Order Granting Thirty Days for Bill of Exceptions.

And on the 25th day of February, 1905, the same being another regular day of said term of said City Court of Mobile, it was ordered and adjudged as follows:

THE CITY OF MOBILE
vs.
FERDINAND PHILLIPS.

Upon motion of the Plaintiff it is ordered that he be granted thirty days from this date in which to present and have signed a bill of Exceptions.

Bill of Exceptions.

In the City Court of Mobile.

THE CITY OF MOBILE, Plaintiff,
vs.
FERDINAND PHILLIPS, Defendant.

Be it remembered that this cause came on for trial before the Judge of the City Court of Mobile and a jury on the twenty second day of February, A. D. 1905, at a regular day of the February Term, 1905, of the said City Court of Mobile and the plaintiff and defendant being duly represented by counsel and the defendant being present in Court the following proceedings were had and taken in the above and foregoing entitled cause, to-wit: The cause was submitted upon the following agreed state of facts:

CITY OF MOBILE
vs.
F. PHILLIPS.

It is agreed between the parties that for the purpose of trial in this cause, the facts are as follows, and are to be considered as proven by competent evidence:

That the pamphlet attached hereto as Exhibit "A" is a true copy of the ordinance adopted by the Mayor and General Counsel of the City of Mobile, and that said ordinance and particularly subdivision or subsection 28 thereof is the ordinance, or part of ordinance, for an alleged violation of which this prosecution was instituted; that said exhibit hereto is to be considered as having been proven by competent evidence.

That the defendant herein is an individual who resides in Mobile, Alabama, and that he is engaged in the business of being a retail beer dealer, for which, under the exhibit hereto, he has — the amount of his license as required by said ordinance for and during the fiscal year, beginning March 15th, 1904, and ending March 14th, 1905;

and that said payment having been made, a license therefor
11 was duly issued by the proper authorities of the City of Mobile, authorizing the defendant to carry on the business of retail beer dealer during said time; that the defendant in addition to his other liquor business carried on under the authority of said paid license under said ordinance, has likewise but at the same place and with the same employés before the institution of this prosecution in the Recorder's Court, and since March 15th, 1904, *has* been engaged in the business of buying and selling beer in kegs, but only under the following circumstances: That the defendant would by letter or telegram sent from Mobile, Alabama, order from a brewery or breweries owned and conducted by residents and citizens of states other than Alabama, certain quantities of lager beer, which, pursuant to said orders, would be shipped by continuous interstate transportation by said non-residents to the defendant at Mobile, Alabama, in kegs, which kegs were, without other packing, loaded into railroad freight box cars and transported by the railroad companies from said breweries in other states to the defendant at Mobile, Alabama. That said purchases by the defendant were outright, and that the defendant by and through said purchases became the owner of said lager beer, to do with as he pleased; that he paid for it usually after its arrival, but never until a bill of lading for each such shipment so paid for, had been received by the defendant at Mobile; that the packages in which said beer came were invariably kegs of the ordinary, usual and customary, commercial sizes, in which the same is packed for sale and shipment, and that in such usual commercial original packages the same was taken from the car upon arrival at Mobile, and stored in the storehouse or warehouse of the defendant in the city of Mobile until sold by the defendant; that the defendant made sales of said kegs in quantities of one or more, to his various customers in and about the city of Mobile and the vicinity thereof, and that such sales were made in contemplation by defendant of deliveries by the defendant in said kegs as original packages, and that the deliveries were thereafter made by delivery wagons owned and operated by the defendant in the city of Mobile to such customers in such original packages. That from the — of the packing and shipment of said beer at the breweries in other states than Ala-
12 bama until after sale and delivery thereof by the defendant to his various customers in the city of Mobile and the vicinity thereof, none of said kegs as original packages ever became broken or open, but the deliveries by the defendant to his respective customers of said beer was always in the same original, usual, commercial packages in which the same were packed and shipped from the breweries in said foreign states. That each and all of the kegs herein mentioned contained more than one quart of beer. That this mode of business has been conducted by the defendant since March 15th, 1904, and still continues, and that except as is herein above stipulated, the defendant, neither as a brewery, person, firm, corporation, dealer, brewer, brewery agent or handler has ever sold beer by the barrel, half barrel or quarter barrel, in the city of Mobile, Alabama, since March 15th, 1904. That nearly fifty per cent. of all the offenses

against the ordinances of the city of Mobile ordained to secure peace and order, *is* brought about by the use of intoxicating liquors. Neither the license sued for nor the fine assessed by the Recorder *have* been paid.

B. B. BOONE,
City Att'y.
FITTS & STOUTZ,
For Def't.

EXHIBIT "A."

License.

City of Mobile, 1904.

Ordinance.

An Ordinance to Fix the Rate of License for the Year Commencing March 15th, 1904.

SECTION 1.

Be it ordained by the mayor and general counsel of the city of Mobile that a license tax for the fiscal year beginning on the 15th day of March, 1904, is hereby imposed and assessed on each person, firm, corporation or association doing business or trading or carrying on any business, trade or profession, by agent or otherwise, within the limits of the city of Mobile, and upon drays, wagons, carts and other vehicles using the streets of said city in the transportation of goods, wares and merchandise and vehicles used for hire at the public stands; and also and in addition to the foregoing, to require a license from March 15th, 1904, to March 14th, 1905, from clubs or social circles, whether incorporated or not, which sell or otherwise dispose of spirituous, vinous or malt liquors, or intoxicating bitters in any quantity less than one quart, when such sales or other disposition of said liquor is not engaged in by said clubs or social circles as a business; and such licenses are hereby fixed for such business, trade or profession, and upon the before-mentioned vehicles, and upon such clubs or social circles as above defined, as follows, to-wit:

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SECTION 2.

1. Abstract companies, agents firms or persons engaged in the examination of titles, not to apply to practicing attorneys at law.....
2. Advertising.—Each person, firm or corporation advertising on streets with banners, floats or cartoons, or any other means, where no vehicle is used, provided not more than three banners or persons are permitted.. $25.00

3. Advertising.—Each vehicle advertising on the streets by means of banners, floats cartoons, or any other means, provided not more than three banners *floats cartoons, or any other means, provided not more than three banners* or persons are permitted..... 25.00
4. Advertising.—Each person, firm or corporation or agent for same, contracting for advertising in street cars.. 60.00
5. Advertising on awnings.—Each person, firm or corporation who uses or permits same to be used, except for his individual advertising, same to be removed within twelve hours after performance advertised.. 10.00
6. Advertising.—With hand bills, each person, firm or corporation 10.00
7. Advertising.—Agents, firms, associations, corporations, or other persons engaged in the business of bill posting, or in the distribution of circulars, pamphlets or other advertising matter, and that they be required to display license before doing business..... 25.00
8. Advertising.—Agents, firms, associations, corporations or other persons distributing circulars, pamphlets or other advertising matter, this clause not to apply to merchants advertis*ed* in this manner their own goods or merchandise.....
9. Agents or owners selling horses or live stock, per month. 7.50
10. Agents, firms, associations, corporations or persons engaged in taking orders or selling clothing, hats, photographs, books or other goods and merchandise at wholesale, this clause not to apply to commercial travelers 37.50
11. Agents real estate, engaged or not engaged as money brokers:
    Gross income not to exceed $2,000.00..... 25.00
    Gross income from $2,100.00 to $7,500.00..... 75.00
    Gross income from $7,501.00 and over..... 100.00
12. Agency, commercial, purporting to give information etc. 150.00
13. Agents or managers of ships or steamships..... 100.00
14. Agents, firms associations or persons lending or advancing money on personal property, or taking waiver notes of exemption on personal or real property, or for making examinations or inspection, making out transfer, or lien of any description, when said charges for interest, inspection, examination, transfer or lien exceed the legal rate of interest. (This clause applies to that class of business known as short loan money lenders or brokers)..... 300.00
15. Agents of railroads or steamship companies not entering the city..... 15.00
16. All public places of amusement where songs, music, dancing or singing are not prohibited by law, and vinous, malt or spirituous liquors are sold..... 150.00

17. Architects ..... 30.
18. Attorneys:
On gross earnings of $500.00 or under..... 6.
On gross earnings of $501.00 to $1,000.00..... 12.
Gross Earnings of $1,001.00 to $1,500.00..... 18.
15 Gross earnings of $1,501.00 to $2,000.00..... 22.
Gross earnings of $2,001.00 to $3,000.00..... 27.
Gross earnings of $3,001.00 to $5,000.00..... 40.
Gross earnings of $5,001.00 to $7,000.00..... 60.
Gross earnings of $7,001.00 to $9,000.00..... 75.
Gross earnings of $9,001.00 to $12,500.00..... 90.
Gross earnings of $12,501.00 and over..... 100.
19. Auctioneers, selling real estate or other articles or merchandise ..... 75.
Auctioneers selling real estate exclusively..... 25.
20. Bagatelle, 15 ball pool, Jenny Lind tables, each, per annum ..... 7.
21. Bagging and ties ..... 50.
22. Bakeries:
Each person, firm or corporation conducting bakeries by hand power exclusively..... 12.
Each person, firm or corporation conducting bakeries with power other than hand..... 25.
23. Balls, public, where admission is charged, personal profit or pay is realized..... 7.
24. Banks, bankers and trust companies, or dealers in exchange when profits do not exceed $12,000.00..... 125.
Banks, bankers and trust companies or dealers in exchange when profits range from $12,000.00 to $20,000.00 ..... 187.
Banks, bankers or trust companies, or dealers in exchange when profits range from $20,000.00 to $35,000.00 ..... 350.
Banks, bankers or trust companies, or dealers in exchange, whose profits are over $35,000.00..... 400.
25. Barber shops, each chair, per annum..... 3.
26. Bicycle dealers and bicycle supplies..... 17.
27. Billiard tables, each, per annum..... 11.
28. Breweries, each person, firm, corporation, dealer, brewer, brewery, agent or handler for a brewery, selling beer by the barrel, half barrel or quarter barrel, this clause is not to include license for wholesale or retail vinous or spirituous liquors..... 200.
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29. Boiler works, or shops employing over five workmen.. 62.
Boiler works employing under five workmen..... 32.
30. Bookbinders ..... 10.
31. Book sellers..... 7.
Booksellers, stationery, paper bags, wrapper paper and articles usually sold in a book store, wholesale and retail ..... 60.

30.00	Booksellers, stationery and articles usually sold in a book store, retail	30.00
6.00	32. Bootblacks, each chair or box	5.00
12.50	Bootblacks, each chair in barber shop	3.00
18.75	33. Bottling, malt liquors or wine, not sold on the premises	15.00
22.50	34. Bottling works for soda water or mineral water	30.00
27.50	35. Bowling saloons, each alley, per annum	10.00
40.00	36. Box, barrel or cistern factories	15.00
60.00	37. Brickmakers, including those soliciting orders or having an office in the city and who deliver said bricks so manufactured by them and receive pay for same within the City of Mobile	25.00
75.00		
90.00		
100.00		
75.00	38. Brokers:	
25.00	Custom house	25.00
	Insurance	25.00
7.50	Lumber and timber	15.00
50.00	Merchandise on business done within the city to and from *to and from* points within the state of Alabama	10.00
	Pawn, giving bond as per ordinance	125.00
12.50	Railroad ticket	25.00
	Real estate without office	12.50
25.00	Ship	50.00
	Tropical fruit	20.00
7.50	Money	30.00
	Livestock, selling horses or mules	25.00
125.00	39. Builders, contractors, repairers, jobbers or painters, taking a contract or contracts or doing repair work, or a job or jobs of $5,000.00 or over	60.00
187.50	17	
	Taking contracts or doing repair work or jobs under $2,000.00	15.00
350.00	Taking contracts or doing repair work or jobs from $2,000.00 to $5,000.00	30.00
400.00	40. Building and loan associations	100.00
3.00	41. Butter dealers, wholesale exclusively	25.00
17.50	42. Broom factories	12.50
11.25	43. Biscuit or cracker factories, carrying stock, representatives or agents	50.00
	44. Cabinet makers	17.50
	45. Candy, wholesale and retail stock of goods under $750.00	20.00
00.00	Stock of goods over $750.00	50.00
	46. Candy, retail	7.50
62.50	47. Carriage repair shop, including wagons and other vehicles	25.00
32.50		
10.00		
7.50	48. Carriage repositories, or Dealers in Carts, wagons or other vehicles and harness and saddlery:	
	On stock of $2,001.00 to $5,000.00 or over	100.00
50.00	On stock of $2,000.00 and under	75.00

49. Chemical works, or said works having an office in the city	125.00
50. China, glassware or crockery, wholesale and retail	62.50
51. China, glassware or crockery retail	12.50
52. Car service associations	75.00
53. Chiropodist, per annum or less period of time	7.50
54. Cider and vinegar factories	20.00
55. Cigar factory:	
One cigar maker	6.00
Two to five cigar makers	12.50
Six to ten cigar makers	17.50
Eleven to fifteen cigar makers	22.50
Sixteen to twenty cigar makers	27.50
Twenty-one cigar makers and over	40.00
56. Cigars for sale at retail, other than at cigar or tobacco stores	3.00
57. Cinematoscope, moving pictures, phonographs or like exhibitions per week or less	15.00

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58. Circuses, with or without menagerie, when same exhibits outside the city limits, but engage in parades through the streets of the city	250.00
Circuses, with or without menagerie, per day	250.00
Circuses, where admission is 10 cents per day	10.00
Circuses, where admission is 20 cents per day	20.00

NOTE.—Where the charge for reserved seats is from 10 to 15 cents, per day $10.00 additional. Where the charge for reserved seats is 20 to 30 cents, per day, $30.00 additional. Where the charge for reserved seats is over 30 cents, per day, $50.00 additional.

59. Civil engineers or surveyors	17.50
60. Clairvoyants or fortune tellers, divine healers or astrologists, palmists, phrenologists, or like pursuits, per week	100.00
61. Clocks or watches wherever sold, other than at a jewelry store	6.00
62. Clothing retail:	
Stock $500.00 and under	7.50
Stock $501.00 to $1,000.00	10.00
Stock $1,001.00 to $3,000.00	17.50
Stock $3,001.00 to $5,000.00	30.00
Stock $8,001.00 to $15,000.00	60.00
Stock $15,001.00 and over	75.00
63. Clothing, wholesale and retail	75.00
64. Coal dealers, wholesale	50.00
65. Coal dealers supplying bunker coal to vessels	60.00
66. Coal dealers, retail	30.00
67. Coal dealers, having yards outside of city limits, soliciting orders in the city, retail	30.00

68. Coal and wood dealers, retail	50.00
69. Coca Cola factories	50.00
70. Coffee roasters or spice mills	30.00
71. Coffee saloons, charging 10 cents for tea, coffee, chocolate or milk per cup or glass	50.00
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Coffee saloons, charging 5 cents for tea, coffee, Chocolate or milk per cup or glass	25.00
72. Coffee, tea and spice stores, retail	60.00
73. Cold storage warehouse	100.00
74. Confectioners, where either cakes, candies, ices or sweetmeats are sold at retail	25.00
	6.00
75. Cook shops	50.00
76. Coppersmiths or manufacturers of stills and worms	
77. Cotton storage:	
Handling under 10,000 bales	30.00
Handling 10,000 to 25,000 bales	60.00
Handling 25,000 to 40,000 bales	90.00
Handling 40,000 to 60,000 bales	125.00
Handling 60,000 to 80,000 bales	150.00
Handling over 80,000 bales	200.00
78. Cotton compress, each	200.00
79. Cotton classer	10.00
80. Cotton, grass or hemp weigher	10.00
81. Cotton pickeries	50.00
82. Cotton dealers in loose	50.00
83. Cotton factors:	
Receiving 9,000 bales and over	100.00
Receiving from 4,000 to 9,000 bales	60.00
Receiving under 4,000 bales	30.00
84. Cotton buyers:	
Buying 12,000 to 20,000 bales	100.00
Buying 6,000 to 11,900 bales	75.00
Buying 3,000 to 6,000 bales	50.00
Buying 3,000 or under	30.00
85. Country produce, dealers, retail	12.50
86. Country produce, dealers, wholesale and retail exclusively	50.00
87. Country produce dealers who receive and export poultry, eggs etc., at wholesale	75.00
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88. Clubs or social circles, where vinous, malt or spiritous liquors are sold, or otherwise disposed of to members in quantities less than one quart, when such sales or other disposition of said liquors are not engaged in as a business, within the following limits, to-wit: Beginning at the river, at the foot of Church street and thence along both sides of said street to — street, thence northward (Including both sides of Claiborne street) to St. Louis street and thence along and including both sides of said street to the river	90.00

89. Clubs or social circles, where vinous, malt or other spirituous liquors are sold, or otherwise disposed of, to members in quantities less than one quart, when such sale or other disposition of liquors is not engaged in as business, outside of the above district, and within the city limits 50.00
90. Drays, wagons and other vehicles, used in transportation of goods and merchandise and vehicles used for hire at public stands, as follows:
    Single team 7.75
    Double team 10.00
    Three horse team or over 12.50
91. Dealers exclusively in native Alabama wines, when the same are sold by the drink or in larger quantities 20.00
92. Debenture companies or agents therefor 125.00
93. Dentists:
    Gross income $3,501.00 or over 50.00
    Gross income $1,500.00 to $3,500.00 ..... 30.00
    Gross income $1,500.00 and under 20.00
94. Detective agencies 25.00
95. Directories, city, each firm or person offering for sale any directory 75.00
96. Distillers of spirituous liquors 150.00
97. Drain pipe and sewer layers, not to apply to plumbers 15.00
98. Dredging companies, employing under eight men ... 50.00

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    Dredging companies, employing over eight men 100.00
99. Dry docks accommodating vessels from 20 to 1,200 tons 100.00
    Dry docks accommodating vessels under 20 tons 25.00
    Dry docks accommodating vessels of 1,200 tons or more 250.00
100. Dogs or bitches, as per ordinance, each 1.00
101. Door, sash and blind dealers 20.00
102. Drugs, retail:
    Stock $250.00 and under 6.00
    Stock $251.00 to $400.00 ..... 9.00
    Stock $401.00 to $600.00 ..... 12.50
    Stock $601.00 to $1,000.00 ..... 20.00
    Stock $1,001.00 to $2,000.00 ..... 25.00
    Stock $2,001.00 to $5,000.00 ..... 27.50
    Stock $5,001.00 and over 50.00
103. Drugs, wholesale exclusively 100.00
104. Drugs, wholesale and retail 125.00
105. Drygoods, retail:
    Stock $300.00 and under 6.00
    Stock $301.00 to $500.00 ..... 9.00
    Stock $501.00 to $1,000.00 ..... 12.50
    Stock $1,001.00 to $2,000.00 ..... 18.00

Stock $2,001.00 to $3,000.00	25.00
Stock $3,001.00 to $5,000.00	30.00
Stock $5,001.00 to $7,500.00	45.00
Stock $7,501.00 to $12,000.00	60.00
Stock $12,001.00 and over	75.00
106. Drygoods, wholesale:	
Stock $50,000.00 and under	100.00
Stock $50,000.00 to $75,000.00	125.00
Stock $75,000.00 to $125,000.00	150.00
Stock $125,000.00 and over	200.00
107. Dye houses	15.00
108. Electric light companies	300.00
109. Electric supplies:	
Stock $500.00 and under	15.00
Stock $501.00 to $750.00	17.50
Stock $751.00 and over	60.00
110. Elevators, Grain	150.00
111. Excelsior factories	50.00
112. Express companies, commercially engaged in the city and sending packages from the city to any point in the state and from any point in the state to the city, it being the purpose not to tax interstate packages	350.00
113. Express companies, commercially engaged in the city, and sending packages from the city to any point in the state and from any point in the state to the city, it being the purpose not to tax interstate packages, where an additional charge is made delivery of such packages inside the corporate limits of the city	450.00
114. Feats of agility, each exhibition	7.50
115. Feather renovators each	10.00
116. Feed and grain, wholesale	50.00
117. Feed and grain, retail exclusively	12.60
118. Fertilizer dealers	25.00
119. Fish dealers, wholesale	30.00
120. Fish dealers retail	25.00
121. Fire or wreck sales of merchandise (unless the merchandise is salvage from the fire wreck in the city of Mobile) no license to be issued for less than the full price of one year	300.00
122. Fireworks, pyrotechnic dealers, wholesale	15.00
123. Fireworks or pyrotechnic dealers, retail	5.00
124. Florists	15.00
125. Flying horses, per week or less	10.00
126. Foundries or machine shops:	
Employing fifteen workmen or employes or over	90.00
Employing ten to fourteen workmen or other employes	50.00
Employing under ten workmen or employes	37.50
127. Fruit Importers	125.00

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128.	Fruit, wholesale dealers and shippers, other than importers	30.00
129.	Fruit, retail, when fruit is the principle stock in trade	20.00
130.	Fruit retail	7.50
131.	Freight inspection bureau	200.00
132.	Furniture, retail:	
	Stock $250.00 and under	6.00
	Stock $251.00 to $500.00	9.00
	Stock $501.00 to $1,000.00	15.00
	Stock $1,001.00 to $2,000.00	20.00
	Stock $2,001.00 to $4,000.00	30.00
	Stock $4,001.00 to $7,500.00	45.00
	Stock $7,500.00 to $10,000.00	60.00
	Stock $10,000.00 to $15,000.00	75.00
	Stock $15,000.00 and over	100.00
133.	Furniture and household goods, canvassers, each	30.00
134.	Furniture, manufactory of office or household goods.	37.50
135.	Futures, each person or firm engaged in buying or selling futures on cotton, grain, stocks bonds or other commodities, or options for speculations for pay, including members of any stock or cotton exchange, or any person, firm or corporation, or agent accepting money to be transmitted for such purpose	750.00
136.	Gas companies	100.00
137.	Gas fitters or plumbers	50.00
138.	General merchandise, where the amount of stock carried does not exceed $100.00 when another license is paid for any other business engaged in	6.00
139.	Gentlemen's Furnishing Goods:	
	Stock $200.00 and under	6.00
	Stock $201.00 to $500.00	9.00
	Stock $501.00 to $1,000.00	12.50
	Stock $1,001.00 to $1,500.00	18.75
	Stock $1,501.00 to $2,500.00	30.00
	Stock $2,501.00 and over	45.00

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140.	Grocers, retail:	
	Stock $200.00 and under	6.00
	Stock $201.00 to $350.00	9.00
	Stock $351.00 to $500.00	12.50
	Stock $501.00 to $750.00	15.00
	Stock $751.00 to $1,000.00	18.75
	Stock $1,001.00 to $1,500.00	25.00
	Stock $1,501.00 to $2,000.00	30.00
	Stock $2,001.00 to $2,500.00	37.50
	Stock $2,501.00 to $3,500.00	45.00
	Stock $3,501.00 to $5,000.00	55.00
	Stock $5,001.00 to $8,000.00	62.00
	Stock $8,001.00 or over	75.00

141. Grocers, wholesale:	
Stock $40,000.00 or over	125.00
Stock under $40,000.00	100.00

NOTE.—The above license does not include license for tobacco and cigars.

142. Green grocers for the sale of meats exclusively, per annum	75.00
For the sale exclusively of vegetables of all kinds, including fruits, per annum	75.00
For the sale of meats, vegetables, poultry, fruits, fish and oysters, per annum	100.00
143. Guarantee or surety or agency	125.00
144. Gunsmiths, selling cutlery, pistols, guns, fishing tackle and hunters' outfits, etc	25.00
145. Hardware, retail:	
Stock $250.00 and under	6.00
Stock $251.00 to $500.00	9.00
Stock $501.00 to $1,000.00	18.75
Stock $1,001.00 to $2,000.00	25.00
Stock $2,001.00 to $4,000.00	30.00
Stock $4,001.00 and over	45.00

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146. Hardware, wholesale	125.00
147. Harness and saddlery, wholesale and retail:	
Stock of $500.00 and over	22.50
Stock under $500.00	12.50
149. Hats and caps, retail:	
Stock $150.00 and under	6.00
Stock $151.00 to $300.00	9.00
Stock $500.00 to $1,000.00	12.50
Stock $1,000.00 to $1,500.00	18.75
Stock $1,501.00 and over	30.00
150. Hats and caps, wholesale	75.00
151. Horseshoers, first forge	10.00
Each additional forge	5.00
152. Hotels or Boarding Houses or Lodging Houses, accommodating—	
50 to 75 persons or over	125.00
25 to 49 persons	75.00
15 to 24 persons	25.00
10 to 14 persons	15.00
Under 10 persons	10.00

NOTE.—The above does not include license for restaurants or cafés.

153. Ice cream, where 10 cents or more is charged per plate	10.00
154. Ice cream when 5 cents is charged	5.00
155. Ice factories and wholesale dealers in ice	60.00
156. Insurance, accident to person or property, each company or agent thereof	90.00

157. Insurance, fire, each company — agent thereof exclusively 250.00
158. Insurance, marine, each company or agent thereof exclusively 150.00
159. Insurance, fire and marine, each company or agent thereof 400.00
160. Insurance, life, each company or agent thereof..... 200.00
161. Insurance, live stock, each company or agent thereof. 50.00
162. Insurance, meaning that class of agents of companies who claim to do a mutual aid business, by paying sick benefits and giving a death benefit. (This clause shall not be construed to mean fraternal
26 benevolent associations, as the Oddfellows, Woodmen of the World, Young Men's Benevolent Association or associations of like character)..... 10.00
163. Insurance adjusters 60.00
164. Intelligence office or employment agency..... 15.00
165. Investment companies or agents thereof, meaning that class of business purporting to pay large rates of interest within short periods of time on moneys invested with them 250.00
166. Jewelry, imitation gold and silver, rolled or gold plated jewelry, retail..... 6.00
167. Jewelry, imitation, gold or silver, rolled or gold plated, wholesale 12.50
168. Jewelry, watches, clocks, diamonds, silver and gold plate, statuary, walking canes, precious stones, wholesale or retail 60.00
169. Jugglers and like exhibitions, each exhibition..... 6.00
170. Junk dealers, exclusively 50.00
171. Junk, hides and wool dealers..... 100.00
172. Junk dealers, buying or selling bottles, sacks, barrels or boxes on the streets of the city..... 7.50
173. Knife boards, cane and baby racks and like pursuits:
First week 3.75
Second week and each succeeding week..... 2.25
174. Land and development companies or agents..... 100.00
175. Laundries, steam 50.00
176. Laundries, Chinese or hand..... 15.00
177. Leather and findings 12.50
178. Library where books are rented..... 6.00
179. Lightning rod agents putting up work in the city... 50.00
180. Lime and cement dealers 12.50
181. Light or heating companies, or agents furnishing light or heat by means other than electricity..... 60.00
182. Locksmiths, where locks, keys or bells are kept for sale, this clause not to apply to hardware stores.... 6.00
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183. Lumber yards, where shingles or lumber are sold... 30.00

184.	Machinery, dealers or agents who deal in machinery, implements or tools, this clause not to apply to hardware stores	75.00
185.	Machine shops, or wire works, employing one man	15.00
	Machine shops or wire works employing over one man	25.00
186.	Marble yards or stone dealers	60.00
187.	Marble yards or stone dealers having no office or yard in the city soliciting, orders in the city	60.00
188.	Marine ways, accommodating vessels of 1,200 tons or more	250.00
	Marine ways, accommodating vessels of 20 tons to 1,200 tons	100.00
	Marine ways, accommodating vessels under twenty tons	25.00
189.	Mattress manufactories	25.00
190.	Messenger service	25.00
191.	Menagerie of animals, per day	15.00
192.	Millinery, retail:	
	Stock $250.00 and under	6.00
	Stock $251.00 to $500.00	9.00
	Stock $501.00 to $1,000.00	12.50
	Stock $1,001.00 to $2,000.00	15.00
	Stock $2,001.00 and over	18.75
193.	Millinery, wholesale	18.75
194.	Mills, corn, grits and flour mills	30.00
195.	Milk and ice cream depots	12.50
196.	Music stores, where music and instruments of various descriptions are sold	50.00
197.	Naval stores	100.00
198.	News butchers, each person or firm doing a news butcher business on any of the different — leaving or entering the city, or having an office in the city	10.00
199.	Newspapers, dailies, other than those published in the city, when sold on the street	22.50
200.	Newspapers or advertising schemes (transient) getting out one or more issues	25.00
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201.	Newspapers purporting to be dailies	30.00
202.	Newspapers purporting to be weeklies or monthlies	10.00
203.	News stands where newspapers and periodicals are sold	12.50
204.	Notions and novelties, wholesale	125.00
205.	Oils, wholesale, illuminating or lubricating oil or grease in bulk, 25,000 to 240,000 gallons	100.00
	241,000 to 350,000 gallons	150.00
	351,000 to 500,000 gallons	225.00
	501,000 to 700,000 gallons	350.00
	701,000 and over	500.00
206.	Oils, dealers in exclusively, oils received in barrels, illuminating or lubricating, 1 barrel to 1,000 or over	125.00

207. Oil, dealers in crude or fuel oil, wholesale	100.00
208. Oil, dealers in crude or fuel oil, retail	25.00
209. Oil, illuminating, peddlars on the street, retail, each vehicle this clause not to include vehicle license	10.00
210. Oriental goods, merchants selling Oriental goods, per annum, or less period of time	50.00
211. Opera, each performance	6.00
212. Panorama, each exhibition	2.50
213. Panoramas, per week	12.50
214. Pressing or clothes cleaning, each person, firm or agent thereof	10.00
215. Public parks, each	25.00
216. Opticians or dealers in eyeglasses or specialties	6.00
217. Organ grinders, or street musicians, per week:	
First week	3.75
Each succeeding week	2.25
218. Osteopathy (to be rated the same as physicians)	
219. Oyster dealers, wholesale	20.00
220. Oyster dealers, retail	6.00
221. Oyster stands in barrooms	5.00
222. Packing houses, companies' branches or agents soliciting orders or selling fresh, salted or smoked meats or other packing house products	250.00

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223. Paints and oils:	
Stock $250.00 and under	6.00
Stock $251.00 to $500.00	9.00
Stock $501.00 to $1,000.00	15.00
Stock $1,001.00 to $2,500.00	25.00
Stock $2,501.00 to $3,000.00	30.00
Stock $3,500.00 and over	45.00
224. Pants manufactory, over five workmen	30.00
Pants manufactory, two to five workmen	18.75
225. Peddlers, residents of the city, selling articles on the street when such pursuit is not in conflict with other clauses of this ordinance, per month	1.00
226. Peddlars, itinerant, selling articles on the street, when such pursuit is not in conflict with other clauses of this ordinance per week	3.75
Each succeeding week	2.25
227. Peddlars of dry goods, laces, woolen goods, notions, fancy goods, clothing, jewelry, etc., on streets, per annum or less period of time	25.00
228. Periodicals or advertising companies or agents, meaning those companies or persons engaged in the business of issuing stamps, coupons or beeks to purchasers whereby they are enabled to receive a premium or articles from the company or agents, or a discount from dealers on cash purchases each.	250.00
229. Photographers and like pursuits, per annum or less.	25.00
Photographic supplies, cameras, Kodaks, etc	12.50

231.	Physicians and surgeons:	
	Gross income $250.00 to $500.00 per year....	6.00
	Gross income $501.00 to $1,000 per year....	12.50
	Gross income $1,001.00 to $1,500.00 per year	18.75
	Gross income $1,501.00 to $2,000.00 per year	22.50
	Gross income $2,001.00 to $3,000.00 per year	27.50
30	Gross income of $3,001.00 to $5,000.00 per year	40.00
	Gross income of $5,001.00 to $7,000.00 per year	60.00
	Gross income of $7,001.00 to $9,000.00 per year	75.00
	Gross income of $9,001.00 to $12,500.00....	90.00
	Gross income $12,501 and over.....	100.00
232.	Piano or organ dealers or agents, exclusively.....	50.00
233.	Pictures and picture frames.....	12.50
234.	Pile drivers, each.....	30.00
235.	Pin pool, each table.....	11.25
236.	Pistol or rifle galleries, per month.....	5.00
	Pistol or rifle galleries, per annum.....	20.00
	Plumbing, per annum	50.00
237.	Potteries or earthenware dealers.....	10.00
238.	Public baths, each tub.....	1.00
239.	Printers, job or solicitors of work, with or without office	20.00
240.	Public halls, each	15.00
241.	Pulp plaster, factory, or those having an office in the city	30.00
242.	Playing cards, wherever sold.....	5.00
243.	Rectifiers or compounders of spirituous liquors, each	125.00
244.	Restaurants or cafés:	
	Where coffee is charged for at 10 cents per cup	50.00
	Where coffee is charged for at 5 cents per cup.	25.00
	Where meals are charged for at 25 cents or less	25.00
245.	Realty investment companies.....	50.00
246.	Roof painting, not in connection with any other business	25.00
247.	Russian, Turkish or vapor baths.....	10.00
248.	Rubber stamp dealers	6.00
249.	Sail or awning makers	10.00
250.	Spring bed manufacturers	25.00
251.	Saw mills, including those taking orders or having office in the city, each.....	60.00
252.	Scavengers, including one single team and giving bond as per ordinance	15.00
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253.	Seed, garden seed dealers.....	20.00
254.	Selling drugs, nostrums or any other article within the city when at the same time a show or exhibition of any kind is given per week.....	50.00

255. Sewing machines, where not principal stock in trade, each dealer 25.00
256. Sewing machine companies, selling directly or by agents or by dealers in sewing machines, when principal stock in trade, each firm, agent or corporation 50.00
257. Shingle mills, including mills taking orders or having an office in the city..... 30.00
258. Ship chandlers, each dealer 75.00
259. Ship chandlers, or agents of ship chandlers, with or without office in the city, furnishing goods or other commodities to vessels, each 75.00
260. Sewer or drain pipe dealers, other than plumbing.. 6.00
261. Shippers and buyers of early vegetables, etc., wholesale 75.00
262. Shoes and boots:
Stock $500.00 and under 6.00
Stock $501.00 to $1,000.00..... 12.50
Stock $1,001.00 to $3,000.00..... 18.75
Stock $3,001.00 to $5,000.00..... 30.00
Stock $5,001.00 to $8,000.00..... 45.00
Stock $8,001.00 to $15,000.00..... 60.00
Stock $15,000.00 and over..... 75.00
263. Shoes and boots wholesale, when not principal stock in trade 50.00
Shoes and boots, wholesale..... 100.00
264. Side shows or exhibitions of paintings, pictures, freaks, curiosities, museum of anatomy, etc., per week or less 15.00
265. Slot machines, displaying pictures, distributing confections, gum, etc., playing music, weighing, when at the same time a penny or more is dropped in said machine, per annum or less period of time..... 6.00
266. Sign painting 6.00

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267. Skating rinks 50.00
268. Soda fountains, whether in connection with stores or not: capital invested $1,000.00 or more per annum or less 20.00
269. Soda fountains less than $-00.00 and over $100.00 per annum or less 10.00
270. Soda fountains, whether in connection with stores or not, capital investment $500.00 and less than $1,000.00 per annum or less..... 15.00
271. Soda fountains, less than $100.00 capital invested, per annum or less..... 5.00

NOTE.—Parties selling hot coffee, tea or chocolate or other hot drinks in a drug store or elsewhere other than coffee saloons and restaurants 12.50

272. Stables, livery or feed stables, where horses, mules or stock are kept for hire or board, each..... 37.50
273. Stables, sales stables where horses and mules are kept for sale 25.00
274. Stables, boarding only 20.00

NOTE.—The above licenses shall not authorize the keeper of any such sale, feed, boarding or livery stable to sell any live stock of any other person on consignment or otherwise without first paying a livestock broker's license of $25.00.

275. In addition to the license tax imposed on livery stables there shall be an additional license for each buggy owned and used for — by such livery stable of ..... .50
In addition to the license tax imposed on livery stables there shall be an additional license for each carriage owned and for hire by such livery stable of 1.00
276. Stationery, where sold other than at a book store.... 6.00
277. Stave dealers 60.00
278. Steam railroads on business done within the city to and from points within the state..... 600.00
279. Stevedores loading vessels:
Over 100 tons burden 60.00
Under 100 tons burden 25.00
280. Stock yards or cattle dealers, taking orders for live stock or soliciting in the city..... 75.00

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281. Stoves, cooking or heating, whether sold other than at a hardware store..... 12.50
282. Street railroads, each..... 500.00
283. Tailor, merchant..... 25.00
284. Telegraph companies, sending messages from the city to points in the state and from points in the state to the city, it being the purpose not to tax interstate commerce 350.00
285. Telephones:
Where 800 telephones and under are in use... 180.00
Where 800 to 1000 are in use..... 250.00
Where 1001 or more are in use..... 350.00
286. Telephones, long distance on service from the city to any point within the state..... 200.00
287. Theaters, per annum..... 250.00

NOTE.—Persons, firms, associations, or corporations advertising in theaters on drop curtains or other curtains, this is to apply to owners, managers, lessees or other persons... 50.00

288.	Theaters or variety shows, where songs, music or dancing is allowed, and wines or vinous, malt or spirituous liquors are sold or when men or women are employed to serve wine, vinous malt, or spirituous liquors on the floor or in the wine rooms (payable $125.00 quarterly in advance)	500.00
289.	Theatrical, musical or other similar exhibitions, each	6.00
289.	Theatrical, musical or other similar exhibitions, per week	25.00
291.	Timber inspectors	12.50
292.	Timber or lumber merchants, importers, exporters or shippers	100.00
293.	Tobacconists retail:	
	Stock $200.00 and under	6.00
	Stock $201.00 to $400.00	12.50
	Stock $401.00 to $600.00	18.75
	Stock $601.00 to $1,000.00	30.00
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	Stock $1,-01.00 and over	45.00
294.	Tobacconists, wholesale	60.00
295.	Tobacconist, wholesale, when principle stock in trade is not tobacco and cigars	25.00
296.	Trained dog and pony shows, where 10 cents admission is charged, per day	12.50
297.	Trained dog and pony shows, where more than 10 cents is charged per day	

NOTE.—Where the charge for reserved seats is from 10 to 15 cents per day $10.00 additional. Where the charge for reserved seats is from 20 cents to 30 cents per days $30.00 additional. Where the charge for reserved seats is 30 cents or more, per day additional $50.00.

298.	Toy dealers	12.50
299.	Tinsmiths, sheet iron workers or slaters employing five or more men	25.00
	Tinsmiths, sheet iron workers or slaters employing less than five workmen	15.00
300.	Transfer of baggage companies	30.00
301.	Trunk and valise manufactories	25.00
302.	Trunks, valises, handbags, dress-suit cases, or telescopes wherever sold, and when not the principal stock in trade	6.00
303.	Typewriter dealers or agents for typewriter supplies	15.00
304.	Undertakers	50.00
305.	Upholsterers	6.00
306.	Veterinary surgeons	20.00
307.	Wallpaperers and decorators	12.50
308.	Waterworks	500.00
309.	Wheelwrights, where one man is employed	15.00
	Wheelwrights, where more than one man is employed	25.00

310. Wharfingers collecting on goods or merchandise, shipped on steamboats or ocean-going vessels, or collecting for mooring such steamboat or ocean-going vessels 125.00

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Wharfingers, collecting on goods or merchandise, shipped on oyster boats, fishing smacks, or like craft, or collecting for mooring said oyster boats, fishing smacks or other like craft..... 30.00

311. Wholesale liquor dealers:

Stock $2,000.00 and under..... 75.00
Stock $2,001.00 to $3,000.00..... 100.00
Stock $3,001.00 and over..... 125.00

NOTE.—This clause does not include license for wholesale keg beer dealers, agents, brewers, breweries or handlers of wholesale keg beer.

312. Wild West shows or exhibitions of like character, per day 50.00

313. Wood dealers, meaning those who have yards who deal in slab wood, shingle blocks, timber ends, and drift wood..... 6.00

314. Wood yards or dealers in black jack, oak, ash, long pine or other hard wood..... 18.75

Wood dealers having yards outside of the city limits but soliciting orders and delivering in the city oak, ash, black jack, pine or other hard woods..... 18.75

315. Wood working manufacturers, or those having an office in the city or taking orders in the city, or receiving pay in the city for orders delivered in the city, employing 30 workmen or employés or more. 60.00
Employing 15 to 29 workmen or employés..... 45.00
Employing 10 workmen or under..... 30.00

316. Wire workers, meaning those persons making names or designs of gold or plated wire, per week..... 5.00

317. Writing on cards, glass, or like pursuits, per week or less 5.00

318. Yeast dealers exclusively..... 25.00

Spirituous Liquors: Selling or otherwise trading in vinous, spirituous and malt liquors as a business in quantities less than one quart, within the following limits, to-wit: Beginning at the river at the foot of Church street, thence along both sides of said street to Conception street, thence north along both sides

36 of said street to St. Michael, thence along and including both sides of St. Michael street to river, payable quarterly in advance..... 150.00

For the same occupation as above within the corporate limits of the city but outside the limits described in the preceding sections, payable quarterly in advance 75.00

Malt Liquors: Selling or otherwise trading in malt liquors, as a business in quantities less than one quart, within the following limits, to-wit: Beginning at the river at the foot of Canal street, thence up Canal street, both sides to Franklin along Franklin, both sides to Conti, along Conti street, both sides, to Scott street, along Scott, both sides, to State street, along State, both sides, to Wilkinson street, along Wilkinson, both sides, to Davis Avenue along Davis Avenue, both sides, to Gracie street, along Gracie, both sides, to Walnut street, along Walnut, both sides, to Armstead, along Armstead, both sides, to Beauregard street, along both sides of said street to the river, payable every four months in advance.. 50.00

For the same occupation as above, within the corporate limits, of the city, but outside the limits described in the preceding section, payable semi-annually in advance 30.00

Any person dealing in said articles who shall sell, barter or exchange or in any way dispose of or permit to be taken spirituous, vinous or malt liquors in any quantity less than one quart or who shall permit the same to be drank by the glass or single drink in or about his place of business shall be deemed a retail dealer; and any dealer so disposing of spirituous, vinous or malt liquors only in quantities of one quart or more shall be deemed a wholesale dealer.

For each retal liquor dealer a retail license must be taken out; and for each wholesale liquor dealer a wholesale license must be taken out.

That no license shall be issued for, and it shall be unlawful to keep or maintain for use any public Jenny Lind table, baga-
37 telle table, pool table, billard table, bowling alley or skating rink in that portion of the city of Mobile bounded on the north by State street, on the east by St. Joseph and St. Emanuel street, on the south by Church street, and on the west by Franklin street, and that any one operating or maintaining any of said tables, bowling alleys, skating rinks, unless in conformity with ordinance adopted September 15, 1903, shall be fined five dollars for each day's violation of same.

SECTION 3. Be it further ordained, That any person desiring to engage in any trade, business or occupation, or any club or social circle, which desires to sell or otherwise dispose of liquors to its members, although not engaged in such sale or disposition of such liquors as a business, shall designate the place at which such trade, business or occupation or where such club or social circle desires to sell or otherwise dispose of liquors to its members, is to be carried on, and a license to be issued hereunder shall designate such place, and such license shall authorize the carrying on of such trade, business or occupation, or authorize such club or social club not engaged in business to dispose of liquors to its members only at such designated

place. For each place at which such trade, business or occupation is carried on, or where a club or social circle so sells or disposes of liquors to its members, a separate license shall be required to be issued and for which a separate license tax shall be paid.

SECTION 4. Be it further ordained, That any person engaging in two or more of the businesses, vocations, callings or professions enumerated in Section 2 of this ordinance, and for which a license is required, for each such persons shall pay for and take out a license for each line of business, vocation, calling or profession.

SECTION 5. Be it further ordained, That the owner of every vehicle subjected to a license shall have it numbered to correspond with the license in plain and conspicuous figures, or a tin tag. The tag shall not be placed on the harness, but on the left side of the vehicle (the city shall furnish the requisite tag, and no vehicle shall have on it a tag for other than the current fiscal year). Said tags shall be issued by the tax collector and a record of the same
38 shall be kept by both the tax collector and the police department, the police department obtaining its record from the tax collector daily.

SECTION 6. Be it further ordained, That all the licenses due the city of whatsoever character shall be collected by the tax collector, and it shall be the duty of the license officer, at least once a quarter to furnish the general council with a list of all persons who have failed to pay their licenses and who are doing business without a license. It shall also be his duty to report the names of all clubs or social circles required by this ordinance to take out licenses before selling or otherwise disposing of vinous, malt or spirituous liquors to members, which have failed to comply with this ordinance and take out the required license or licenses. It shall also be the duty of the license officer to keep a correct register of all vehicles and owners thereof, subject to license, and shall within thirty days after this ordinance takes effect notify all delinquents of their delinquency, and within fifteen days after such notice, he shall report to the chief of police the names of all parties who have failed to pay their vehicle license; and shall swear out warrants against the same. It shall then become the duty of the chief of police to enforce the provisions of this ordinance. If the license officer fail to perform the duties provided for in this ordinance, he shall be subject to a fine by the recorder not exceeding fifty dollars.

SECTION 7. Be it further ordained, That each and every license in this ordinance declared is due and payable on the fifteenth day of March, 1904, and the tax collector will proceed to collect the same. Whenever any person, firm association, corporation or club or social circle shall fail or refuse after publication of this ordinance to obtain a license under the provisions of the same, he shall be fined in such sum as the recorder may impose not exceeding fifty dollars, nor less than five dollars, for each day's failure to obtain such license.

SECTION 8. Be it further ordained, That it shall be the duty of the license officer to take all proper, lawful and necessary steps to arrive at the true and just amount of the stocks of goods or merchandise carried by persons, firms or corporations which are liable,

under this ordinance, to the payment of license in accordance
39 with the value of the stocks of goods or merchandise carried by them, and it shall also be the duty of said license officer to take all necessary proper and lawful steps to arrive at the gross income of those persons who are liable to pay licenses under this ordinance, based upon their said gross income.

SECTION 9. Be it further ordained, That all persons, firms, associations and corporations which are required to pay license under the terms of this ordinance other than clubs or social circles shall furnish a statement of the amount of their stock of goods, gross income or number of bales of cotton handled, to the license officer, upon demand being made by such officer. Said license officer shall also have the power to require an affidavit to be made before himself or other officer authorized to administer oaths, showing the amount of stock carried, the amount of gross income, or the number of bales of cotton handled; in the event of the refusal of any person, firm, corporation or association to furnish the statement required under the terms of this ordinance to be furnished the license officer on demand, then, in that event, said license officer shall have the power to fix the amount of the stock of goods, gross income, or number of bales of cotton handled by such person, firm, corporation or association so refusing to furnish the statement required.

When any business trade or profession not enumerated in the foregoing ordinance, shall appear for adjustment, the tax collector shall report said business trade or profession to the mayor, who, in his discretion, may fix a license on such business, trade or profession.

SECTION 9½. All licenses issued, unless otherwise provided, shall be collected for as follows, to-wit:

When issued between March 15th and July 14th, inclusive full license.

When issued between July 15th and No——

When issued between November 15th and March 14th, one-third license.

SECTION 10. Be it further ordained, That all ordinances and resolutions in conflict with the provisions of this ordinance be, and the same are hereby repealed, and that the city clerk is hereby instructed to have this ordinance published for one insertion in each of the daily papers, giving it to the lowest and best bidder.

40 SECTION 11. Be it further ordained, That this ordinance shall take effect and be in force on and after its adoption and approval.

Approved.

CHAS. E. McLEAN, *Mayor.*

March 14, 1904.

City of Mobile.

Terms Expire March 15, 1906.

Mayor: Charles E. McLean.

Mayor *pro tem.* and chairman of the General Council, P. J. Lyons.

C. L. Lavretta, Chairman Board of Public Works.

Aldermen.

S. Berney, F. J. Inge, Cary W. Butt, E. B. Kirkbride, Jno. Craft, P. J. Lyons, J. H. Norville.

Councilmen.

Thomas E. Smith, First Ward. Foster K. Hale, Second Ward.
A. S. Lyons, Third Ward. Max Michael, Fourth Ward.
D. P. Brown, Fifth Ward. Wm. T. Holt, Sixth Ward.
Aug. Z. Oberhaus, Seventh Ward. J. Grey Thomas, Eighth Ward.

Officers.

R. B. Owen, Jr., City Clerk. Frank Petrinovich, Tax Collector.
Alfred W. Torrans, License Officer. B. B. Boone, City Attorney.
Albert S. Towle, City Engineer. Jos. N. McAleer, Recorder.
C. W. Soost, Supt. City Water Works. T. P. Brewer, Committee Clerk.
John Case, Chief of Police. Thos. Price, Chief of Fire Department.
Geo. W. Myrick, Ass't Chief Fire Dep't. John F. Kelly, Supt. of Streets.
Wm. Hanlon, Keeper of Magnolia Cemetery. C. W. Oberkich, Clerk of Markets.

This was all the evidence adduced upon the trial of this cause.

Whereupon the Plaintiff asked the Court to give the following charge which said charge was in writing:

No. 1. The Court charges the jury that if they believe the
41 evidence they must find for the plaintiff.

The Court refused to give this charge next above written to the jury and endorsed upon the same in writing Refused "O. J. Semmes Judge." The defendant then asked the Court to give the jury the following charge which said charge was in writing:

No. 2. The Court charges the jury that if they believe the evidence in this case they ought to find a verdict for the defendant.

The Court gave to the jury the said charge next above written and endorsed upon the same in writing: Given O. J. Semmes Judge.

Be it further remembered that on the twenty fifth day of February 1905 the said day last named being another regular day of the February Term 1905 the following order was made by the Court and entered of record in the minutes of said Court:

City Court of Mobile, February Term, 1905.

SATURDAY, *February 25th*, 1905.

THE CITY OF MOBILE, Plaintiff,
vs.
FERDINAND PHILLIPS, Defendant.

Upon motion of the plaintiff it is ordered that it be granted thirty days from this date in which to present and have signed a bill of exceptions in this cause.

Be it further remembered that the plaintiff did present for signature and the Judge of said Court did sign this bill of exceptions in this case within the time allowed by said order next above set out, as witness the signature of the Honorable Oliver J. Semmes on this 4th day of March 1905.

O. J. SEMMES,
Judge of the City Court of Mobile.

Filed March 4th, 1905.
JAMES A. SHELTON, *Clerk.*

Appeal Bond.

42 STATE OF ALABAMA, *Mobile County:*

Know All Men By These Presents, That we the City of Mobile, Pat J. Lyons, and B. Boone are held and firmly bound unto Ferdinand Phillips' heirs, executors or administrators in the sum of One hundred Dollars for the payment of which, we jointly and severally bind ourselves, our heirs, executors or administrators, firmly by these Presents.

Sealed with our seals, and dated this 4th day of March A. D. 1905.

The Condition of the above Obligation is such, That whereas the above bounden The City of Mobile has this day applied for, and obtained an appeal returnable to the 4th Monday in March 1905 of the Supreme Court of Alabama, to supersede and reverse a Judgment recovered by the said Ferdinand Phillips against the City of Mobile at the February Term 1905 of the City Court of Mobile, for Mobile County.

Now, if the said the City of Mobile shall prosecute to effect its said suit in the Supreme Court of the State of Alabama, and shall pay and satisfy such Judgment, as the Supreme Court shall render in the premises then this obligation to be null and void, otherwise to be and remain in full force and effect.

THE CITY OF MOBILE.
By PAT J. LYONS, *Mayor.* [SEAL.]
PAT J. LYONS. [SEAL.]
B. B. BOONE.

Filed 4 day of Mch. 1905.
JAMES A. SHELTON, *Clerk.*

Citation in Appeal.

THE STATE OF ALABAMA,
Mobile County, City Court:

To the Sheriff of Mobile County, Greeting:

Whereas, at a Term of the City Court of Mobile for Mobile County, held on the first Monday of February 1905 in a certain cause in said Court wherein the City of Mobile was Plaintiff and Ferdinand Phillips was Defendant a Judgment was rendered against said City of Mobile to reverse which, it the said City of Mobile has on this day applied for and obtained from this office, an Ap-
43 peal returnable to the next Term of our Supreme Court of the State of Alabama, to be held at Montgomery, on the fourth Monday of March next, and the necessary bond having been given by the said City of Mobile with Pat J. Lyons and B. B. Boone as sureties.

Now, You Are Hereby Commanded, without delay to cite the said Ferdinand Phillips or Mess. Fitts & Stoutz Attorney to appear at the next Term of our said Supreme Court, to defend*ant* against the said Appeal, if they think proper.

Witness, James A. Shelton, Clerk of the City Court of said County, this 4th day of Meh. A. D. 1905.

JAMES A. SHELTON, *Clerk.*

Sheriff's Return.

Received March 4, 1905 and on same day I served a copy of within Citation in Appeal on R. W. Stoutz one of the firm of Fitts & Stoutz.

JOHN F. POWERS, *Sheriff,*
By M. I. GOLDSMITH, *D. S.*

Certificate of Appeal.

THE STATE OF ALABAMA, *Mobile County:*

City Court of Mobile.

I, James A. Shelton, Clerk of the City Court of Mobile, do hereby certify that in a certain cause heretofore pending in said City Court of Mobile, wherein the City of Mobile is the Plaintiff and Ferdinand Phillips is Defendant, a judgment was rendered on the 22nd day of February A. D. 1905 by the said City Court of Mobile, at the February Term A. D. 1905, thereof, wherein it was considered and adjudged by the Court that the Defendant was not guilty.

And I further certify that on the 4th day of March A. D. 1905 the said City of Mobile applied for and took an appeal from the said

judgment to the Supreme Court of the State of Alabama at Montgomery, returnable thereto on the fourth Monday of March A. D. 1905 and that thereupon all further proceedings in said cause were suspended until the same can be heard and determined by the said Supreme Court.

44 In Witness Whereof I have hereunto set my hand this the 17th day of March A. D. 1905.

JAMES A. SHELTON, *Clerk.*

Filed March 17th, 1905.
JAMES A. SHELTON, *Clerk.*

Certificate to Transcript.

THE STATE OF ALABAMA, *Mobile County:*

I, James A. Shelton, Clerk of the City Court of Mobile, in and for said State and County, hereby certify that the foregoing thirty nine pages and six lines contain a full true and correct transcript of the proceedings had in a certain cause wherein the City of Mobile was Plaintiff and Ferdinand Phillips was Defendant, as the same remains of record in my office.

In Testimony Whereof, I have hereunto set my hand and affixed the seal of said City Court of Mobile, at office in Mobile, Ala., this 18th day of March A. D. 1905.

[Seal City Court of Mobile, Alabama.]

JAMES A. SHELTON,
Clerk City Court of Mobile, Mobile, Alabama.

45 *Assignment of Errors.*

Comes the appellant and says the Court below erred in the rulings in this cause and specifies the following grounds of error:

1. The Court erred in giving to the jury Charge No. 2 asked in writing by appellee (Transcript page 41).

The Court erred in refusing to give to the jury Charge No. 1 asked in writing by the appellant. (Transcript page 41.)

B. B. BOONE,
Att'y for Appellant.

46 *Orders of Supreme Court of Alabama.*

SUPREME COURT, TUESDAY, *April* 4, 1905.

The Court met pursuant to adjournment.

Present: Hon. T. N. McClellan, Chief Justice. Hon. Jon' Harralson, Associate Justice. Hon. J. R. Dowdell, Associate Justice. Hon. N. D. Denson, Associate Justice.

1 Div., 259.

Mobile City Court.

CITY OF MOBILE
vs.
FERDINAND PHILLIPS.

Come the parties by attorneys, and submit this cause on briefs for decision.

The Court adjourned until Wednesday, April 5th, 1905, at 10 o'clock A. M.

SUPREME COURT, WEDNESDAY, *April 11th*, 1906.

The Court met pursuant to adjournment.

Present: Hon. S. D. Weakley, Chief Justice. Hon. J. R. Tyson, Associate Justice. Hon. R. T. Simpson, Associate Justice. Hon. Jno. C. Anderson, Associate Justice.

1 Div., 259.

Mobile City Court.

CITY OF MOBILE
vs.
FERDINAND PHILLIPS.

Come the parties by attorneys, and the record and matters therein assigned for errors, being submitted on briefs and duly examined and understood by the Court, it is considered that in the record and proceedings of the City Court there is manifest error. It is therefore considered that the judgment of the City Court be reversed and annulled, and the cause remanded to said Court for further proceedings therein. It is also considered that the appellee pay the costs of appeal of this Court and of the City Court.

The Court adjourned until Thursday, April 12th, 1906, at 10 o'clock A. M.

47 THE STATE OF ALABAMA, *Judicial Department:*

The Supreme Court of Alabama, November Term, 1905-6.

1 Div., 259.

CITY OF MOBILE
v.
FERDINAND PHILLIPS.

Appeal from Mobile City Court.

WEAKLEY, *C. J.:*

The appellee was engaged in the business of a retail beer dealer in Mobile and had taken out his license as such retail dealer for

1904. This prosecution was instituted against him for a violation of the license ordinance of said city, in that he had sold beer by the barrel without first taking out a license from the city to carry on such business, for which, by another section of the ordinance, a license was required.

It is contended for appellee that section 43 of the charter of Mobile (Acts 1901, p. 2342 *et seq.*) operates to exempt him from taking out a license for selling beer by the barrel, etc., because he had already obtained a license as a retail beer dealer. We think there is no merit in this contention. The section of the charter relied on provided "that not more than one license under this act shall be assessed against or collected from partners trading or business done
48 under a firm name." Appellee was enjoying two separate privileges, and unless some other valid reason may be found to exempt him, should procure a license for each. The section quoted was intended merely to authorize a partnership or firm business, in which several persons are interested, to be conducted upon payment of one license.

The other question for consideration is whether, under the facts agreed on, the license tax is a regulation of or imposition upon interstate commerce and invalid under the commerce clause of the Constitution of the United States, and upon this question the decisions of the Supreme Court of the United States are of paramount authority. We do not deem it necessary to review the decisions of that court, upon the question involved, or similar questions, nor will we undertake to analyse or harmonize them. The comparatively recent cases of *Am. Steel & Wire Co. v. Speed* 192 U. S. 520, and *Kehrer v. Stewart*, 197 U. S. 60, in each of which the court was unanimous, have led to a clearer understanding of the true distinctions between the cases, and will enable other courts with more accuracy to determine whether, under a given state of facts, there has or has not been imposed by the state or a municipal subdivision thereof an unconstitutional imposition or burden upon interstate commerce. And it must be held upon authority of *Kehrer v. Stewart, supra*, and the authorities therein cited, that appellee was carrying on an independent, domestic, business, for which the city of Mobile had the right to require the prepayment of a license tax; indeed, this is a stronger case for the city than the one just cited.

Our own cases of *State v. Agee*, 83 Ala. 110; Keith v. State, 91 Ala. 2, and *Stratford v. City Council of Montgomery*, 110 Ala. 619, which were rested upon the decisions of the Supreme Court of the United States referred to in the opinions, are not similar to this, nor in conflict with the conclusion here reached. If they are read in connection with the two leading cases first above cited, the lines of demarcation will be apparent.

The city court erred in giving the affirmative charge for appellee; it should have been given for the city of Mobile.

Reversed and remanded.

49 In the Supreme Court of Alabama.

CITY OF MOBILE, Appellant
vs.
FERDINAND PHILLIPS, Appellee.

I, Rob't F. Ligon, Clerk of the Supreme Court of the State of Alabama, by virtue of the annexed Writ of Error, and in obedience thereto, do hereby certify that the foregoing pages numbered from 1 to 48, both inclusive, contain a true, full and complete transcript of the record and proceedings had in said Court, in the case of City of Mobile, Appellant, *vs.* Ferdinand Phillips, Appellee, (1 Div. No. 259), as the same appears of record on file in this office.

In testimony whereof, I have hereunto affixed my official signature, as Clerk of the Supreme Court of Alabama, and have caused the Seal of said Supreme Court to be hereunto affixed, at the Capitol, in the City of Montgomery, Alabama, on this the 25th day of August, A. D. 1906.

[Seal of the Supreme Court of Alabama.]

ROB'T F. LIGON,
[SEAL.] *Clerk of the Supreme Court of Alabama.*

50 In the Supreme Court of Alabama.

THE CITY OF MOBILE, Original Plaintiff and Appellant,
vs.
FERDINAND PHILLIPS, Original Defendant and Appellee.

To the City of Mobile, a municipal corporation, Greeting:

You are hereby cited and admonished to be and appear at a session of the Supreme Court of the United States to be holden at the Capitol in the City of Washington, District of Columbia on the first day of the next regular term of said Supreme Court of the United States, pursuant to a writ of error filed in the Clerk's office of the Supreme Court of Alabama, wherein Ferdinand Phillips is plaintiff in error and you are defendant in error, to show cause, if any there be, why the judgment rendered in your favor against said plaintiff in error, by the Supreme Court of Alabama as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, this 31 day of May A. D. 1906.

SAMUEL D. WEAKLEY,
Chief Justice of the Supreme Court of Alabama.

On behalf of the city of Mobile a municipal corporation and defendant in error herein I hereby accept service of this citation and waive further service & notice in said cause this 31st day of May A. D. 1906.

B. B. BOONE,
City Attorney for City of Mobile, Alabama.

51 FERDINAND PHILLIPS, Plaintiff in Error,

vs.

CITY OF MOBILE, a Municipal Corporation, Defendant in Error.

Writ of Error.

The President of the United States to the Honorable the Judges of the Supreme Court of the State of Alabama, Greeting:

Because in the records and proceedings, and also in the rendition of the judgment of a plea which is in the said Supreme Court of Alabama before you, being the highest court of law or equity in said state in which a decision could be had in said suit between said Ferdinand Phillips as plaintiff in error (original defendant, and appellee in your said state Supreme Court) and the city of Mobile, a municipal corporation as defendant in error (original plaintiff, and appellant in your said state Supreme Court) and wherein judgment was in favor of the said city of Mobile in said state Supreme Court on the 11th day of April, 1906, and against said Ferdinand Phillips, in which said suit said Ferdinand Phillips relied for his defense upon his plea that a municipal ordinance passed by the constituted authorities of the said city of Mobile, the same being an authority exercised under the state of Alabama and the basis of the demand against said Ferdinand Phillips, was invalid as applied to him under this case because repugnant to the Constitution of the United States and the decision of said state Supreme Court was in favor of the validity of said ordinance, and the further defense that the acts of the said Ferdinand Phillips were the exercise of a right claimed under the Constitution of the United States and the decision of said state Supreme Court was against the right under the Constitution of the United States so set up; all to the great damage
52 of said Ferdinand Phillips as by his complaint appears; and we, being willing that the error, if any hath been, should be duly corrected and full and speedy justice done to the parties as aforesaid in this behalf, do command you if judgment herein be given, and that then, under your seal distinctly and openly, you send the record and the proceedings aforesaid with all things concerning the same to the Supreme Court of the United States, together with the writ, so that you may have the same in Washington on the first day of the next regular term of said court to be then and there held, that the record of the proceedings aforesaid being inspected, the Supreme Court of the United States may cause further to be done therein to correct the error what of right and according to the laws and customs of the United States should be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the said Supreme Court of the United States, this the 31st day of May, A. D. 1906, and also my official signature and the seal of the United

States Circuit Court for the Middle District of Alabama this the day and year aforesaid.

[Seal of the United States Circuit Court, Middle District of Alabama.]

J. W. DIMMICK,
Clerk of the United States Circuit Court for the Middle District of Alabama.

Allowed by
SAM'L D. WEAKLEY,
Chief Justice of the Supreme Court of Alabama.

53 In the Supreme Court of Alabama. At Law.

THE CITY OF MOBILE, Original Plaintiff and Appellant,
vs.
FERDINAND PHILLIPS, Original Defendant and Appellee.

Assignment of Errors.

The said Ferdinand Phillips, plaintiff in error, who was appellee in the State Supreme Court, and defendant in the Court of original jurisdiction, in connection with his petition for a writ of error makes the following assignment of errors which he avers occurred upon the trial and determination of said cause in the Supreme Court of Alabama.

1. Said Supreme Court of Alabama erred in reversing the judgment of the City Court of Mobile, which judgment of the city Court of Mobile was in favor of the defendant, said Ferdinand Phillips.

2. The Supreme Court of Alabama erred in not holding that the defendant Ferdinand Phillips was not liable for the license tax demanded by the City of Mobile and was not guilty of any violation of any valid city ordinance under the facts of this cause.

3. The Supreme Court of Alabama erred in holding that the defendant Ferdinand Phillips under the facts agreed on in this cause was carrying on an independent domestic business for which the City of Mobile had the right to require the prepayment of a license tax.

4. The Supreme Court of Alabama erred in not holding under the plea of the defendant Ferdinand Phillips filed in the City Court of Mobile and under the facts agreed on, that the business described in the statement of facts for the transaction of which a license was demanded in this cause, was interstate commerce, for the transaction of which the city of Mobile had no authority to charge a license.

5. The Supreme Court of Alabama erred in deciding that the City Court of Mobile erred in giving the affirmative charge for appellee Ferdinand Phillips and that it should have been given for the City of Mobile.

54 6. The Supreme Court of Alabama erred in deciding said appeal pending before it in favor of the city of Mobile and against the said Ferdinand Phillips. And the said Ferdinand Phil-

lips plaintiff in error prays that the Supreme Court of the United States will reverse and annul said judgment of the Supreme Court of Alabama aforesaid.

RICHARD WM. STOUTZ,
Attorney for Ferdinand Phillips.

55 In the Supreme Court of Alabama.

THE CITY OF MOBILE, Original Plaintiff and Appellant,
vs.
FERDINAND PHILLIPS, Original Defendant and Appellee.

This 31st day of May A. D. 1906 came Ferdinand Phillips the appellee in the Supreme Court of Alabama (defendant below) and plaintiff in error in the United States Supreme Court, by his attorney, and filed herein and presented to the undersigned Justice of the Supreme Court of the State of Alabama, his petition praying for the allowance of a writ of error intended to be urged by him, praying also that a transcript of the record and proceedings and papers upon which the judgment of the Supreme Court of Alabama was rendered, duly authenticated, may be sent to the Supreme Court of the United States at the Capitol in Washington, District of Columbia, and that such other and further proceedings may be had as may be proper in the premises.

On consideration whereof the undersigned Samuel D. Weakley, Chief Justice of the Supreme Court of the State of Alabama, does hereby allow the writ of error prayed for upon the said Ferdinand Phillips giving bond according to law in the sum of six (600) Hundred Dollars which shall operate as a supersedeas bond.

And I the said Samuel D. Weakley, Chief Justice as aforesaid, do hereby certify that the said Supreme Court of Alabama is the highest court in said State of Alabama having jurisdiction of said case and the questions therein decided, and that said decision and judgment of the Supreme Court of Alabama, to reverse which a writ of error is prayed for by said Ferdinand Phillips, drew into question the validity of a municipal ordinance passed by the constituted authorities of the City of Mobile, a municipal corporation under the laws of the State of Alabama, the same being an authority exercised under the State of Alabama, on the ground of such authority being repugnant to the Constitution of the United States, and that the decision of said Supreme Court of Alabama therein was in favor of the validity of said city ordinance; and that likewise

56 said decision and judgment of the Supreme Court of Alabama drew into question a right claimed by said Ferdinand Phillips under the Constitution of the United States, and that the decision therein was against the right so set up or claimed by said Ferdinand Phillips under the Constitution of the United States that said matters were decided by said State Supreme Court and that the decision thereof was necessary to the judgment of said Supreme Court of Alabama.

Witness my hand and the seal of said Supreme Court of Alabama on this the day and year first aforesaid.

[Seal of the Supreme Court of Alabama.]

SAM'L D. WEAKLEY,
Chief Justice of the Supreme Court of Alabama.

57 In the Supreme Court of Alabama. At Law.

THE CITY OF MOBILE, Original Plaintiff and Appellant,
vs.
FERDINAND PHILLIPS, Original Defendant and Appellee.

Petition for Writ of Error.

And now comes petitioner Ferdinand Phillips, the defendant and appellee herein, and says that on or about the 11th day of April, A. D. 1906, this Court entered judgment herein in favor of the plaintiff and appellant, the City of Mobile, a municipal corporation, and against this defendant and appellee, in which judgment and the proceedings had prior thereunto in this cause, certain errors were committed to the prejudice of this defendant and appellee, all of which will more in detail appear from the assignment of errors which is filed with this petition.

And this petitioner shows that said judgment so rendered on said 11th day of April, A. D. 1906, by this Court was a final judgment in the highest court of the State of Alabama in which a decision herein could be had, and that said decision and judgment drew into question the validity of a municipal ordinance passed by the constituted authorities of the City of Mobile, a municipal corporation under the laws of the State of Alabama, the same being an authority exercised under the State of Alabama, on the ground of such authority being repugnant to the constitution of the United States, and that the decision herein was in favor of the validity of said City ordinance, and that likewise there was drawn into question a right claimed under the constitution of the United States and that the decision therein was against the right set up or claimed by this petitioner under the constitution of the United States. Petitioner shows that said questions were specially set up and presented to the State Court wherein said cause originated and in said Supreme Court of Alabama; that said matters were decided by said State Supreme Court, the highest court in said State, and that the decision thereof was necessary to the judgment rendered herein.

58 Wherefore this petitioner prays that writ of error may issue in his behalf to the Supreme Court of the United States for the correction of errors so complained of, and that a transcript of the record, proceedings, and papers in this cause duly authenticated, may be sent to said Supreme Court of the United States.

Petitioner further prays that an order be entered granting a supersedeas of said judgment of the Supreme Court of Alabama and

that an order be entered fixing the amount of bond required to be given by this petitioner for the purposes herein mentioned.

RICHARD WM. STOUTZ,
Attorney for Ferdinand Phillips, Petitioner.

Filed May 31st, 1906.
R. F. LIGON,
Clerk Supreme Court of Alabama.

59 Copy.

In the Supreme Court of Alabama.

THE CITY OF MOBILE, Original Plaintiff and Appellant,
vs.
FERDINAND PHILLIPS, Original Defendant and Appellee.

Know all men by these presents, that we, Ferdinand Phillips as Principal, and E. E. Richard and Ferdinand Meyer and Thomas Martin as sureties, are held and firmly bound unto the City of Mobile, a municipal corporation within and under the laws of the State of Alabama, in the full and just sum of Six ($600.00) Hundred Dollars to be paid to the said City of Mobile, its certain attorneys, municipal successors, or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors and administrators, jointly and severally, by these presents.

Sealed with our seals and dated this 25th day of May, A. D. 1906.

Whereas, lately in the Supreme Court of the State of Alabama in a suit depending in said Court wherein said City of Mobile, a municipal corporation, was appellant (and plaintiff in the City Court of Mobile), and said Ferdinand Phillips was appellee (and defendant in said City Court of Mobile), a judgment was rendered against said Ferdinand Phillips, and the said Ferdinand Phillips having obtained a writ of error returnable to the Supreme Court of the United States, and filed a copy thereof in the Clerk's office of said Supreme Court of Alabama, to reverse the judgment of said Supreme Court of Alabama in the aforesaid suit, and a citation directed to the said City of Mobile citing and admonishing it to be and appear at a session of the Supreme Court of the United States to be holden at the Capitol in the City of Washington on the 1st day of the next regular term of said Supreme Court of the United States.

Now the consideration of the above obligation is such, that if the said Ferdinand Phillips shall prosecute said writ of error to effect and answer all damages and costs if he fail to make said plea good, then this obligation to be void; else to remain in full force and virtue.

FERDINAND PHILLIPS,
By R. W. STOUTZ, *Att'y.* [SEAL.]
60 E. E. RICHARD. [SEAL.]
FERDINAND MEYER. [SEAL.]
THOMAS MARTIN. [SEAL.]

Signed, sealed and delivered in the presence of
R. W. STOUTZ.

61 Copy.

STATE OF ALABAMA, *Mobile County:*

I, Price Williams, Jr., Judge of the Probate Court of Mobile County, Alabama, do hereby certify that I am personally well acquainted with the sureties in the foregoing bond, and that they are each worth over and above their exemptions more than the penalty of the foregoing bond.

Witness my hand this 25th day of May, A. D. 1906.

P. WILLIAMS, JR.,
Judge of the Probate Court of Mobile County, Alabama.

We, E. E. Richard, Thomas Martin and Ferdinand Meyer, the above named sureties, do solemnly swear that after paying our just debts and liabilities we are each worth in real and personal property within the jurisdiction of the Supreme Court of Alabama, subject to execution, levy and sale, and over and above all exemptions, an amount exceeding the penalty of the foregoing bond.

E. E. RICHARD.
FERDINAND MEYER.
THOMAS MARTIN.

Subscrubed and sworn to before me this 25th day of May, A. D. 1906.

[Seal A. M. Tunnell, Mobile County, Alabama, Notary Public.]

A. M. TUNNELL,
Notary Public, Mobile County, Ala.

The foregoing bond is hereby taken and approved by the undersigned Chief Justice of the Supreme Court of Alabama on this the 31st day of May, A. D. 1906.

SAM'L D. WEAKLEY,
Chief Justice of the Supreme Court of Alabama.

62 In the Supreme Court of Alabama.

CITY OF MOBILE, Appellant,
vs.
FERDINAND PHILLIPS, Appellee.

I, Robt. F. Ligon, Clerk of the Supreme Court of Alabama, by virtue of the within Writ of Error, and — obedience thereto, do hereby send herewith the records and proceedings in said cause, duly certified and authenticated according to law, to the Honorable the Supreme Court of the United States.

In Testimony Whereof, I have hereunto affixed my official signature, as Clerk of the Supreme Court of Alabama, and have caused

the Seal of said Supreme Court to be hereunto affixed, at the Capitol, in the City of Montgomery, Alabama, on August 25th, 1906, in the Year of Our Lord, One Thousand Nine Hundred and Six, and of the Independence of the United States the One Hundred and thirty-.

[Seal of the Supreme Court of Alabama.]

ROBERT F. LIGON,
Clerk of the Supreme Court of Alabama.

Endorsed on cover: File No. 20,385. Alabama Supreme Court. Term No. 113. Ferdinand Phillips, plaintiff in error, *vs.* The City of Mobile. Filed October 1st, 1906. File No. 20,385.

STATEMENT OF THE CASE.

The question involved in this case is the validity of a municipal license ordinance imposing a tax on plaintiff in error for carrying on a business shown by an agreed statement of facts, the business so taxed being claimed by plaintiff in error to be interstate commerce and the tax void as a burden on interstate commerce contrary to the United States Constitution.

The plaintiff in error was arrested upon a warrant issued by a municipal magistrate, the Recorder of the City of Mobile, upon complaint of the license officer of said City upon the charge that plaintiff in error—

"Violated the license ordinance of the City of Mobile, by being a dealer in and selling beer by the barrel, half barrel or quarter barrel, within the limits of the City of Mobile, since the 15th day of March, 1904, without taking out or procuring a license from the City of Mobile to carry on such business, as required by item 28 of said ordinance, approved March 15, 1904."

Record page 1.

Plaintifffff in error was tried and convicted before said Recorder and took an appeal (Record page 3), to the City Court of Mobile, a Court of general jurisdiction, where he was tried *de novo* before the Judge and a jury upon a complaint claiming said fine imposed by said Recorder.

Record page 4.

The complaint in the City Court is short and read as follows:

The City of Mobile claims of the defendant the sum of fifteen dollars as penalty, for that whereas, heretofore, to-wit: on February 3rd, 1905, the Recorder of the City of Mobile fined the defendant in the said sum for the violation of the license ordinance of the City of Mobile, approved March 14th, 1904, more particularly sub-section 28, which reads as follows: "Breweries, each person, firm, corporation, dealer, brewer, brewery, agent or handler for a brewery, selling beer by the barrel, half barrel or quarter barrel, this clause not to include license for wholesale or retail vinous or spirituous liquors, $200.00." And plaintiff avers that defendant has not taken out the license required by said license

ordinance nor has he paid such fine so imposed by the Recorder.

Record page 4.

Thereupon plaintiff in error filed a demurrer raising the point of unconstitutionality, assigning the following grounds:

Fourth. Because the particular sub-division of the license ordinance fixing the license, for non-payment of which this prosecution is instituted, is unconstitutional and void as a tax upon interstate commerce.

Fifth. Because the license ordinance for an alleged violation of which this prosecution is instituted, is purely a revenue measure and not an exercise of the police power lawfully delegated; and for aught that appears by the complaint the business taxed by the license, for non-payment of which this prosecution is instituted is wholly interstate commerce in original packages.

Sixth. Because the particular subdivision of the license ordinance requiring the license for non-payment of which this prosecution is instituted is a tax upon interstate commerce in original packages as well as a tax upon local business and is therefore null and void so far as it applies to interstate commerce; and the complaint does not aver that this defendant is engaged in such business other than interstate commerce in goods in the original package.

Seventh. Because the particular subdivision of the license ordinance requiring the license for non-payment of which this prosecution is instituted is a tax upon interstate commerce in original packages as well as a tax upon local or intra-state business and is therefore null and void.

Record pages 4 and 5.

The demurrer was overruled.

Record page 5.

Whereupon the plaintiff in error interposed a plea of "Not Guilty," and a special plea as follows:

Comes the defendant and for plea herein, states that this defendant is not guilty of the matters and things charged against this defendant in the plaintiff's complaint, and that the plaintiff should not recover as claimed in the complaint, because of the following facts:

Because the particular sub-division of the license ordinance prescribing a license, for the non-payment of which this suit was instituted, is unconstitutional and void, as a tax upon interstate commerce so far as it applies to this defendant; and this defendant says that between March 15th,

1904, and the date of the institution of this suit this defendant dealt in beer by the keg only in original packages, of such goods manufactured in a State or States other than Alabama, sold to this defendant by a non-resident of Alabama, and shipped from the place of manufacture from points outside of Alabama to the City of Mobile. That said packages were the ordinary, usual and customary packages in which said goods were customarily packed for sale and transportation, and that this defendant is advised that such acts constitute interstate commerce, which is not taxable by the State of Alabama, or any of the municipal sub-divisions thereof, merely for purposes of revenue; and that the license ordinance referred to in the complaint is a revenue law, and not a law enacted under the police power; and that except as hereinabove stated, this defendant is not and has not been since March 15th, 1904, a dealer in, nor has this defendant sold beer in any manner, fashion or quantity, within the limits of the City of Mobile, Alabama.

Record pages 5 and 6.

Thereupon the case was tried upon the merits on an agreed statement of facts, on the pleas above mentioned.

Record pages 8 to 11.

Whereupon the trial Judge gave a peremptory instruction to the jury to find a verdict for the defendant, who is plaintiff in error here, and refused a peremptory instruction requested by the City of Mobile in its favor.

Record page 31.

Thereupon the jury returned a verdict and the Court rendered judgment in favor of defendant below, who is plaintiff in error here (Record page 7), and the City of Mobile appealed to the Supreme Court of Alabama (Record page 32), and the Supreme Court of Alabama reversed the judgment of the City Court of Mobile, and held that judgment should have beeen given for the City of Mobile.

Record pages 35 and 36.

The plaintiffs in error sued out a writ of error to this Court to reverse the judgment of the Supreme Court of Alabama.

The entire license ordinance in question is copied in the record; (pages 10 et seq.); the only parts material to this case are as follows:

"Be it ordained by the Mayor and General Council of

the City of Mobile that a license tax for the fiscal year beginning on the 15th day of March, 1904, is hereby imposed and assessed on each person, firm, corporation, or association doing business or trading or carrying on any business, trade or profession, by agent or otherwise, within the limits of the City of Mobile, and upon drays, wagons, carts and other vehicles using the streets of said City in the transportation of goods, wares and merchandise and vehicles used for hire at the public stands; and also and in addition to the foregoing, to require a license from March 15, 1904, to March 14, 1905, from clubs or social circles, whether incorporated or not, which sell or otherwise dispose of spirituous, vinous or malt liquors, or intoxicating bitters in any quantity less than one quart, when such sales or other disposition of said liquor is not engaged in by said clubs or social circles as a business; and such licenses are hereby fixed for such business, trade or profession, and upon the before mentioned vehicles, and upon such clubs or social circles as above defined, as follows, to-wit:"

Record page 10.

"28. Breweries, each person, firm, corporation, dealer, brewer, brewery, agent or handler for a brewery, selling beer by the barrel, half barrel or quarter barrel, this clause is not to include license for wholesale or retail vinous or spirituous liquors .....$200.00"

Record page 12.

"311. Wholesale liquor dealers:

Stock $2,000.00 and under .....$ 75.00
Stock $2,001.00 to $3.000.00..... 100.00
Stock $3,0001.00 and over 125.00

Note.—This clause does not include license for wholesale keg beer dealers, agents, brewers, breweries or handlers of wholesale keg beer."

Rcord page 27.

The agreed statement of facts indicating, without conflict or doubt, that the business sought to be taxed is interstate commerce, appears in record at pages 8 to 10, both inclusive, and shows that the business was only that of selling *in the original packages* beer which was imported by interstate contract from point of manufacture in other States; the sales and delivery pursuant thereto being in the ordinary, usual, customary, commercial packages in which the same were transported from such other States, without the original packages being broken or opened; that all said packages were kegs containing more than one quart.

The errors assigned and relied on are as follows:

The said Ferdinand Phillips, plaintiff in error, who was appellee in the State Supreme Court, and defendant in the Court of original jurisdiction, in connection with his petition for a writ of error makes the following assignment of errors which he avers occurred upon the trial and determination of said cause in the Supreme Court of Alabama:

1. Said Supreme Court of Alabama erred in reversing the judgment of the City Court of Mobile, which judgment of the City Court of Mobile was in favor of the defendant, said Ferdinand Phillips.

2. The Supreme Court of Alabama erred in not holding that the defendant Ferdinand Phillips was not liable for the license tax demanded by the City of Mobile and was not guilty of any violation of any valid City ordinance under the facts of this cause.

3. The Supreme Court of Alabama erred in holding that the defendant Ferdinand Phillips under the facts agreed on in this cause was carrying on an independent domestic business for which the City of Mobile had the right to require the prepayment of a license tax.

4. The Supreme Court of Alabama erred in not holding under the plea of the defendant Ferdinand Phillips filed in the City Court of Mobile and under the facts agreed on, that the business described in the statement of facts for the transaction of which a license was demanded in this cause, was interstate commerce, for the transaction of which the City of Mobile had no authority to charge a license.

5. The Supreme Court of Alabama erred in deciding that the City of Mobile erred in giving the affirmative charge for appellee Ferdinand Phillips and that it should have been given for the City of Mobile.

6. The Supreme Court of Alabama erred in deciding said appeal pending before it in favor of the City of Mobile and against the said Ferdinand Phillips. And the said Ferdinand Phillips, plaintiff in error, prays that the Supreme Court of the United States will reverse and annul said judgment of the Supreme Court of Alabama aforesaid.

RICHARD WM. STOUTZ,
Attorney for Ferdinand Phillips.

Record pages 39 and 40.

This case, and case No. 112 entitled *Richard vs. City of Mobile*, appealed from United States Circuit Court for the Southern District of Alabama, in equity, are identical in principle and the underlying facts, and though presented to this Court differently, no good reason exists why they should not be decided here together.

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THE TAX IMPOSED BY THIS ORDINANCE IS AN UNCONSTITUTIONAL BURDEN ON INTERSTATE COMMERCE IN THIS CASE.

All the assignments of error and the case may well be determined by the one general question presented, viz.: Can the City of Mobile by an exercise of the *revenue* power, without any pretense that it is levied in the exercise of the police power, impose a tax upon the business of selling, in the original packages, beer imported from other States in such original packages?

We contend that such an attempt to impose a tax for revenue is unconstitutional as a burden on interstate commerce by a long and *unbroken* line of decisions of this honorable Court, and that the necessity for a decision upon this question now is caused by a misinterpretation by the Court below of some recent decisions of this Court.

It is the law as declared by numerous decisions of this Court that the business of buying and selling original packages of goods, traded in as commerce between the States, is not taxable by the States.

Lyng vs. Michigan, 135 U. S., 166.
Leisy vs. Hardin, 135 U. S., 100.
Austin vs. Tennessee, 179 U. S., 363-4.
N. & W. R. R. vs. Sims, 191 U. S., 449-50.

Beer in kegs is in the original packages.

Keith vs. State, 91 Ala., 2.
Lyng vs. Michigan, 135 U. S., 166.
Leisy vs. Hardin, 135 U. S., 100.
Austin vs. Tennessee, 179 U. S., 351.
Brown vs. Maryland, 12 Wheaton, 419.
Com. vs. Schollenberger, 171 U. S., 1.

And it makes no difference that the license or occupation tax is directed against individuals within the taxing State, who are themselves the owners of the goods as original interstate importers. So long as the goods remain in the original packages the business of selling them cannot be taxed before they are sold.

We contend that the right to order beer from breweries in other States and bring it here in kegs, constituted importing the same, and gave the interstate importers a right to sell the beer in the original package, free of any State or

municipal taxation on such business not exacted under the police power, and that, until said sale had taken place after importation and was an accomplished fact, the keg or kegs of beer forming the subject matter of the sale, did not become mingled with a mass of property in the State so that the *business of selling* same could be taxable therein.

Keith vs. State, 91 Ala., 6.

In the case of Schollenberger vs. Pennsylvania, 121 U. S., p. 22, a case of interstate importation, Mr. Justice Peckham quotes from Mr. Chief Justice Fuller in a prior case as follows:

"The case of Leisy vs. Hardin, 135 U. S., 100 (34; 128, 3 Inters. Com. Rep 36), went a step further than the Bowman case, and held that the importer had the right to sell in a State into which he brought the article from another State in the original package or kegs, unbroken and unopened, notwithstanding a statute of the State prohibiting the sale of such articles except for the purposes therein named and under a license from the State. Such a statute was held to be unconstitutional as repugnant to the clause of the Constitution granting power to Congress to regulate commerce with foreign nations and among the several States. Mr. Chief Justice Fuller, in speaking for the Court, said: 'Under our decisions in Bowman vs. Chicago & N. W. R. R. *supra*, they had the right to import this beer into that State, and in the view which we have expressed they had the right to sell it, by which act alone it would become mingled with the common mass of property within the State. Up to that point of time, we hold that, in the absence of congressional permission to do so, the State had no power to interfere by seizure or by any other action, in prohibition of importation and sale by the foreign or non-resident importer.' "

In the Schollenberger case this Court held that the sale of a ten pound package of oleomargarine in the original tub or bucket in which the same was packed was protected by the original package doctrine, even though the sale was by the importer to the consumer.

It results from this that the test question is whether the property was sold in the original package. If it was, it did not become mingled with the property in the State until after the sale, and it makes no difference to whom the sale might be made, whether to wholesaler, jobber, retailer or consumer. The test is *original package*, and that only.

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THE "WILSON" BILL.

In 1890 it was deemed wise by Congress to abdicate to the States the *police power* over all fermented, distilled or other intoxicating liquors. Accordingly, by Act of August 8, 1890, 26th U. S. Statutes, page 313, c. 728, commonly called the "Wilson Bill," it was provided as follows:

"That all fermented, distilled or other intoxicating liquors or liquids transported into any State or Territory, or remaining therein for use, consumption, sale or storage therein, shall upon arrival in such State or Territory be subject to the operation and effect of the laws of such State or Territory *enacted in the exercise of its police powers,* to the same extent and in the same manner as though such liquids or liquors had been produced in such State or Territory, and shall not be exempt therefrom by reason of being introduced therein in original packages or otherwise."

3 Fed. Stat. Ann. 853.

This statute has been construed and its scope determined; its purpose is limited purely to give to the State *POLICE POWER and that alone,* over liquors which come under the head of interstate commerce.

3 Fed. Stat. Ann. 854.
Reyman B. Co. vs. Brister, 179 U. S., 455.
In re Rahrer, 140 U. S., 545.
Vance vs. Vandercook, 170 U. S., 438.
Pabst B. Co. vs. Terre Haute, 98 Fed., 330.
State vs. Bengsh, 170 Mo., 81; 70 SW., 710, 720.
F. Miller B. Co. vs. Stevens, 102 Iowa, 60; 71 NW., 186.
Stevens vs. State, 61 Ohio, St., 597; 56 NE., 178.
Tinker vs. State, 90 Ala., 640.

But the Act of Congress above quoted gives no right to levy a tax on the *business of dealing* in such liquors while the same retains its interstate-import character, *purely for purposes of revenue or taxation.* The police power cannot be put forward as an excuse for oppressive and unjust legislation, not under the police power.

Austin vs. Tennessee, 179 U. S., 349, citing Holden vs. Hardy, 169 U. S., 366, 392.
Pabst Brewing Co. vs. Terre Haute, 98 Fed., 330.

The ordinance of the City of Mobile of which the above quoted provisions are a part, is purely a revenue ordinance and is not a police ordinance in any respect.

Stratford vs. Montgomery, 110 Ala., 626.

Leloup vs. Mobile, 76 Ala., 401, 403, reversed by S. C., 127 U. S., 644.
Pabst Brewing Co. vs. Terre Haute, 98 Fed., 334.
Brennan vs. Titusville, 153 U. S., 289, 301-2.
Swords vs. Daigle, 32 So. Rep. ,94 (La.)

"Because a license may be required in the exercise of the police power it does not follow that every license rests for its validity upon such police power. A State may legitimately make a license for the privilege of doing a business one means of taxation, and that such was the purpose of this ordinance is obvious, not merely from the fact that in the title it is declared to be for 'general revenue purposes,' but also from the further fact that, so far as we are informed by any quotations from or references to any part of the ordinance, there is no provision for any supervision, control, or regulation of any business for which by the ordinance a license is required. In other words, so far as this record discloses, this ordinance sought simply to make the various classes of business named therein pay a certain tax for the general revenue of the city."

Brennan vs. Titusville, 153 U. S., 301-2.

The above quotation from the Brennan case applies with peculiar accuracy to the case at bar..

The City of Mobile has no power under its charter to enact any police regulations as applied to *wholesale* liquor dealers. The revenue power is given by Section 43 of its charter (Pamphlet Acts of 1901, page 2374, as follows:

"Sec. 43. Be it further enacted, That the said General Council shall besides the tax heretofore authorized have authority to assess and collect from all persons or corporations trading or carrying on any business, trade, or profession by an agent or otherwise within the limits of said corporation a license tax which shall be fixed and declared each year by ordinance of said corporation and the license so paid shall be issued and the amount imposed shall be collected as may be provided by ordinances of said corporation. * * * "

The "tax heretofore authorized" is the *ad valorem* property tax assessed and levied against the property within the municipality.

The grant of power to license and regulate certain classes of business *as an exercise of police power*, is given by Section 21 of the same charter (Acts 1901, page 2360), as follows:

"Sec. 21. Be it further enacted, That in order that its duties may be efficiently performed, said General Council shall have full power and authority to make and adopt and declare by-laws or ordinances not in conflict with the laws

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of this State or the United States, and the better to effectuate this, the chairman elected to preside over the meetings of the said General Council shall have authority to appoint from the members of the General Council committees upon all legislative questions and other matters as he may deem necessary, said committees to report the result of their consideration to the General Council, and the said by-laws or ordinances adopted and declared by the General Council as above provided shall have force and effect in said City of Mobile for and concerning the several matters mentioned in this section and therein to provide and declare such fines, penalties and forfeitures, imprisonment and hard labor within the limitations and restrictions hereinafter provided as they may deem appropriate, and any person or persons violating or disobeying such by-laws or ordinances may be punished therefor as provided in such by-laws or ordinances upon conviction thereof before said Recorder, who shall have jurisdiction and cognizance of such matters, that is to say, said General Council may make, ordain and declare such by-laws and ordinances for and concerning the prevention and removal of nuisances and the prevention and extinction of contagious and infectious diseases, and in giving effect to these powers they are to act in co-operation with the Board of Health and delegate to said Board such executive authority as the General Council and said Board of Health may mutually agree upon concerning the lighting of the streets, avenues and public places, the licensing and regulating of retail liquor dealers and of hackney coaches, carriages, wagons, hacks and drays, the regulation of pawn brokers, the restraint or prohibition of gambling, the regulation of theatrical and other entertainments and amusements, the establishment, regulation and management of markets, the construction, repair and regulation of sewers, pipes and appurtenances thereto, or thereunder. They may also make ordinances concerning rights of way and regulations of street cars, street railways and other railroads and their stations, the storing and handling of gunpowder, dynamite, oil and other inflammable and hazardous substances, the regulation of weights, and measures, and may establish and regulate magazines w[illegible]n or without the city and may own and regulate property inside or outside of its limits for magazines, pest houses, quarantine and other purposes, they may also make such other ordinances concerning the establishment and regulation of fire wards, fire companies, and fire departments, the establishment and regulation of fire limits, the sinking and repairing of wells, erection and repairing of pumps, the removal or pulling down of houses, fences and other structures, to prevent the spread of fire and to extinguish the same, the regulation of partition and other fences, and of partition and other walls, the prevention of

disorderly assemblies, and houses, and establishment and discontinuance and regulation of city cemeteries, whether within or without the city limits, the regulation of the burial of the dead therein, and the prohibition of such burial within the city limits or within two miles thereof except in such cemeteries; and the General Council may also pass such by-laws and ordinances as may require vagrancy, idleness, disorderly or dangerous and suspicious persons, all persons of evil life or ill fame and such as have no means of support, or are likely to become chargeable to the City of Mobile, or to Mobile County, as paupers, all persons found drunk in or about the streets or loitering in or about tippling houses or who can show no reasonable cause for not having an occupation or employment or business or who have no fixed place of residence or who cannot give a good account of themselves, all such as may be grossly indecent in language or behavior publicly in the streets and all prostitutes or such as lead a notoriously lewd or licentious course of life to leave the city or pay a fine not exceeding fifty dollars, and said General Council may provide upon their failure or refusal to pay such fine or leave the City for their condemnation to labor under the direction of said General Council for a limited time, not to exceed three calendar months, unless such bond and security shall be given sooner. * * * "

It will be noticed that the power is given to license and regulate RETAIL liquor dealers and some other classes of business, BUT NOWHERE IS IT GIVEN POLICE POWER TO REGULATE WHOLESALE LIQUOR DEALERS.

The City can not enact an ordinance not authorized by its charter.

Exparte Mayor of Anniston, 90 Ala., 516.
New Decatur vs. Berry, 90 Ala., 432.
Norris vs. Town of Oakman, 138 Ala., 411.
S. C., 35, So. Rep. 450.

So that if we attempt to construe the license tax here in question as an exercise of police power it would be beyond the powers of the municipality; viewing it as a purely revenue measure it is apparently within the charter powers but void as a burden on interstate commerce.

It was contended also that the City has police power to pass the ordinance in question by virtue of a "general welfare clause" in the charter. The answer to this is the City charter does not contain any "general welfare clause" and, if it did, it could not properly be interpreted to authorize taxation thereunder.

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15 A. & E. Enc. Law (1st Ed.), 1192.
Ex parte Burnett, 30 Ala., 461; 467-8.

The decision below, now sought to be reversed, was based in large part on the cases of

American Steel & Wire Co. vs. Speed, 192, U. S., 500.

Kehrer vs. Stewart, 197 U. S., 60.

I submit that when rightly interpreted, those cases are no authority in support of the decision below. In City of Mobile vs. Phillips, 146 Ala., 158; 40 So. Rep., 826, now sought to be reversed, the Supreme Court of Alabama squarely bases its opinion on these two cases, and yet it refuses to "undertake to analyze or harmonize them" when the effect thereof, in connection with other decisions of this Court, was discussed.

The case of American Steel & Wire Company vs. Speed, 192 U. S., 500, is not applicable to the present case. That case deals with a *property tax*, pure and simple, which is a local or State question, and not a Federal question.

The merchant's tax involved in the American Steel & Wire case, is merely a tax on capital invested in that State and a tax on such capital is a property tax and not a tax on the commerce.

Pullman P. C. Co. vs. Pa., 141 U. S., 25.

The City of Mobile claimed that the doctrine of the American Steel & Wire case is brand new and overruled many of the older decisions of this Court on this subject. But the doctrine of the American Steel & Wire case is not new, as the report in 192 U. S., 500, shows. That property, *as such*, was subject to *property taxation*, has been announced by this Court often; the following cases are cited by the American Steel & Wire case as authority therein:

Woodruff vs. Parham, 8 Wallace, 123 (1868).
Brown vs. Houston, 114 U. S., 622 (1885).
Emert vs. Mo., 156 U. S., 296 (1894).
Kelly vs. Rhodes, 188 U. S., 1 (1902).

Woodruff vs. Parham, 8 Wallace, 123, cited by the American Steel & Wire case, does not adequately show the nature of the tax passed on; the report in the Alabama Supreme Court (41 Ala., 335) which is thereby reviewed, shows it to be pure an *ad valorem property tax*. The decision in 41 Ala., 335, is based on the similar case of Hinson vs. Lott,

40 Ala., 335, likewise an *ad valorem* property tax.

Brown vs. Houston, 114 U. S., 622, cited by the American Steel & Wire case, is a tax on coal as property—an *ad valorem* tax upon property; see the interpretation of it in Emert vs. Mo., 156 U. S., 317.

Emert vs. Mo., 156 U. S., 296, cited by the American Steel & Wire case, was a case of a pedler's license; the law under consideration was enacted under the police power (page 311); many cases are reviewed and incidentally the statement of facts in the opinion (page 310 and 311) do not even remotely touch a question of original package or interstate commerce.

Kelly vs. Rhodes, 188 U. S., 1, cited by the American Steel & Wire case, dealt with an attempt by a State to tax a drove of 10,000 sheep, *as property* under the regular *ad valorem property tax*, while the sheep were being driven through the State from another State, *en route* to market in a third State. The opinion holds that property at rest for an indefinite time, either before, during or after interstate transportation, is liable to local taxation *as property*.

This Court recognizes the difference between a tax on the goods *as a property tax*, and a tax on the business of selling in original packages *as a tax on the commerce itself*.

Pullman P. C. C. vs. Pa., 141 U. S., 23.

The distinction between property taxes and occupation taxes is recognized as marked in the State of Alabama. The Alabama Supreme Court says:

"In this case, the tax is not on property, but on a different subject and species of taxation—a license or privilege tax, for doing business in the city. There is a marked distinction in our Constitution kept up in our revenue systems and recognized in the adjudged cases, between the two subjects of taxation—property as such, and a license or privilege tax."

City of Anniston vs. So. Ry. Co., 112 Ala., 565.
Goldsmith vs. Huntsville, 120 Ala., 184.

This distinction must be kept in mind, *and as Mr. Justice White* (speaking for the unanimous Court) *says in the American Steel & Wire case in* 192 *U. S., pages* 520-1, *the cases will be found not to be overruled.* Mr. Justice White also says therein that the cases of Lyng vs. Michigan and Leisy vs. Hardin, are distinguishable from and not overruled by the American Steel & Wire case.

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The State may tax goods *as property* by a non-discriminating property tax, though it may not tax them *as imports*, distinctively and discriminatingly as such, and *it may not tax the business of importing* the goods from another State and *selling them in original packages.*

It is axiomatic that the power of tax without limit is the power to destroy, and there is no power above the State to limit the extent of the State's power to tax, so long as the provisions of the United States Constitution as to equal rights to all are not violated.

Leisy and Hardin, 135 U. S., 100, decides that the State could not, under any power possessed by the States, prohibit the "interstate-importation" and sale in original packages of any commodity.

Lyng vs. Michigan, 135 U. S., 166, was a case where a dealer in beer in original packages imported from another State as in the case at bar, was prosecuted for non-payment of a revenue license. In its controlling principles the case was exactly like the case at bar and this Court held that conviction could not be sustained.

In the case of N. & W. R. R. vs. Sims, 191, U. S., 441, (decided at same term with American Steel & Wire case), Mr. Justice Brown, (who also delivered the unanimous opinion during the next term in the Kehrer case,) expressing the unanimous opinion of the Court, said on page 449:

"Upon the other hand, for the past seventy-five years and ever since the original case of Brown vs. Maryland, 12 Wheat., 419, 6 L. Ed., 678, we have uniformly held that States have no power to tax directly, or by license upon the importer, good imported from foreign countries *or other States*, while in their original packages, or before they have become commingled with the general property of the State and lost their distinctive character as imports. In that case a law of Maryland required importers to take out a license before they could be permitted to sell their imported goods. That was declared to be void not only as a tax upon imports, but as an infringement upon the power of Congress to regulate commerce. The case is one of the most important ever decided in this Court, and has been adhered to by a uniform series of decisions since that time."

Vance vs. Vandercook, 170, U. S., 348, was a case wherein Mr. Justice White, *who spoke for the Court in the American Steel & Wire case*, delivers the opinion of the Court and says on pages 444-5:

"It is also certain that the settled doctrine is that the power to ship merchandise from one State into another carries with it, as an incident, the right in the receiver of the goods to sell them in the original packages, any State regulation to the contrary notwithstanding; that is to say, that the goods received by interstate commerce remain under the shelter of the interstate commerce clause of the Constitution, until by a sale in the original package they have been commingled with the general mass of property in the State."

Then in the case of American Express Co. vs. Iowa, 196 U. S., 133, Mr. Justice White speaks of the American Steel & Wire case as a *tax on merchandise*—a "general and undiscriminating tax on merchandise."

It would seem that, if the State had all the time the power to reach the *business of selling* interstate original packages of goods for purposes of taxation, it should also have the power to reach it for police purposes. Yet it did not.

Leisy vs. Hardin, 135 U. S., 100.

It was necessary to get the Wilson Bill passed to be able to reach it for police purposes.

By the Wilson Bill, Congress merely removes the impediment to the States reaching the interstate liquor *through the police power* and keeps in existence any other impediment to the State's interference with interstate commerce in original packages.

If the State can tax the business of selling property brought here from another State, what need is there in the opinion of this Court in

Reyman B. Co. vs. Brister, 179 U. S., 455,

of the discussion of the line of demarcation between police and revenue power? In that case the Court takes pains to distinguish between the police and revenue power, and says in terms unmistakable that if the license tax there discussed was a revenue measure it would be invalid; if a police measure it would be valid. Yet all that discussion would be superfluous if the power to tax the property was not limited to a *general undiscriminating tax on property as such*, but embraced the right to tax the *business of selling the property*.

Kehrer vs. Stewart, 197 U. S., 60, came to this Court from the Supreme Court of Georgia, which latter Court twice decided the case on two appeals before it came to this Court.

1st Appeal, 115 Ga., 184; 41 S. E., 680.
2nd Appeal, 117 Ga., 969; 44 S. E., 854.

The Kehrer case as first decided by the State Court,

115 Ga., 184; 41 S. E., 680.

construes the tax under discussion there to be a tax on the

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occupation of the agent as distinguished from the *business of the principal.* The Court said:

"In the first place, it is perfectly clear that the tax is not laid upon packing houses, but is laid upon 'agents of packing houses.'" * * *

"We think it is clearly evident from the general tax act of 1900 that the tax under consideration is a tax upon occupation or vocation, one to be paid for the right or privilege of engaging in such occupation or vocation; and the expressions 'doing business' and 'business is carried on' refer to the exercise of the vocation of a packing house agent." * *

"As the tax is laid upon 'agents of packing houses,' it is evident that, relative to this particular tax, the vocations referred to are the vocations of those who are required to pay the tax—that is 'agents of packing houses;' and that when such an agent does business for his principal in any county of this State he is carrying on in that county the vocation of a packing house agent. The agent of the packing house shall pay the tax 'at the time of commencing to do business.' It seems manifest that the word 'business' here refers to the business of the agent, and not that of the principal, for it is the agent, and not the principal, who shall pay the tax 'at the time of commencing to do business.' * * *

"The legislature has the right to classify, and it has classified. It has created a new class of occupations to be taxed, viz., 'agents of packing houses,' and has imposed an occupation tax upon all of that class."

The *Kehrer* case as decided by the State Court on the second appeal,

117 Ga., 969; 44 S. E., 854,

holds the construction put upon the act in question on the first appeal to be *res adjudicata* and adhered to its views expressed on the first appeal; on the second appeal it merely discussed the new points raised after the first appeal. On the second appeal the question of interstate commerce was considered.

The courts of that State recognize no distinction between a tax on *property as such* and a tax on the business selling such property. They affirm the validity of the occupation tax as a tax on property. The question of the validity of the tax on property *as such* is purely a State question, subject only to the Federal Constitutional limitation that it shall be non-discriminating.

This Court in its opinion in the Kehrer case does not decide for itself according to its own views that this obvious

occupation tax was a tax on *property as such*, but merely recites that the State Supreme Court and *both parties to the cause solemnly admit that it is a property tax*. This Court merely accepts that solemn admission as binding on the parties just as this Court considers itself bound by the decision of the State Court as to the validity of a State *property* tax where the Federal Constitutional limitation is not violated.

The cases cited by the *Kehrer* case on the second appeal

44 S. E. Rep., 117 Ga., 969,

show that the tax is held to be a property tax when they were discussing whether the tax was void as a burden on interstate commerce. The State Court cities as authorities relied upon, the cases of *Brown* vs. *Houston*, 114 U. S., 622, and *Emert* vs. *Mo.*, 156 U. S., 296, both of which have been commented on earlier in this brief. They also cite *Machine Co.* vs. *Gage*, 100 U. S., 676, where a license on sewing machine peddlers was sustained *as a property tax* because not discriminating against the goods of other States. The *Gage* case has this to say:

"A State cannot require a license to be taken out to sell foreign goods while remaining in the packages in which they were imported. Such a law is contrary to the provision of the Constitution of the United States touching the laying of imposts by a State, and to the commerce clause of that instrument. Brown vs. The State of Maryland, 12 Wheat., 419."

The last paragraph of the opinion in the *Gage* case pointedly adopts the State Court's opinion sustaining the tax *based on the goods and not on the vocation* and cites in conclusion four cases involving taxes on property as such. It cites among them the case of Welton vs. Mo., 91 U. S., 275, which was a property tax case where the tax was declared void, not because of the occupation of trading therein, but because the *goods* of another State were discriminated against.

Another obvious ground of distinction between the Kehrer case and the case at bar, is this: In the Kehrer case the domestic business upon which the license tax was sustained consisted of sales in Georgia of goods manufactured by Nelson Morris & Co. in Illinois and shipped *to themselves in Georgia for sale*, and no "*commerce*" of any kind was involved until the sales thereof in Georgia.

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To ship goods manufactured by one to the manufacturer himself in another State is not commerce at all, for one cannot traffic with himself. That is quite different from a case (as the one at bar) where a citizen of Alabama buys goods manufactured in Wisconsin by interstate contract and receives them by interstate transportation; the latter is a case of commerce of an interstate character, entitling the importer to sell the goods in the State of delivery in the original package without burden imposed by the State upon such commerce.

The Georgia case, second appeal, in a *syllabus by the Court* says "a tax on the privilege of selling goods is in effect a tax on the goods themselves."

That holding is not in accord with the Alabama decisions on the same point, which hold to the contrary.

> City of Anniston vs. So. Ry. Co., 112 Ala., 565.
> Goldsmith vs. Mayor of Huntsville, 120 Ala., 184.
> S. C., 24, So. Rep., 509.

But that conflict does not affect the present case since each State determines for itself the validity of property taxes, no matter whether in form a property or occupation tax, and the State Court's determination is binding on this Court so long as it is not violative of the provisions of the United States Constitution prohibiting discrimination.

"A State may, in its wisdom, classify property for purposes of taxation, and the exercise of its discretion is not to be questioned in a Court of the United States, so long as the classification does not invade rights secured by the Constitution of the United States."

> Connolly vs. Union Sewer Pipe Co., 184 U. S., 562-3.

No especial weight should be attached to the holding of the Alabama Supreme Court that Phillips, by reason of the acts shown by the agreed statements of facts in the case of City of Mobile vs. Phillips, 146 Ala., 158; 40 So. Rep., 826, "was carrying on an independent, domestic business, for which the City of Mobile has the right to require the prepayment of a license tax;" (Record page 36 of case No. 113.

"For whatever may be the divergent legal rules in the several States concerning the precise time when the liability of carrier as such in respect to the carriage of goods ends, they cannot affect the general principle as to when an interstate shipment ceases to be under the protection of the com-

merce clause of the Constitution, and thereby comes under the control of the State authority."

Adams Express Co. vs. Kentucky, 206 U. S., 137.

This Court has again recently recognized the distinction between property and privilege taxes. It was said by Mr. Justice Holmes, expressing the unanimous views of this Court,

"In other words, it was contended that the brooms, before they were sold, had become mingled with, or part of, the common mass of goods in the State, and so subject to the local law. *But the doctrine as to original packages primarily concerns the right to sell within the prohibiting or taxing State goods coming into it from outside.* * * * Some argument was made, to be sure, that even if the defendant was engaged in interstate commerce when he delivered the goods, still the ordinance bound him. American Steel & Wire Co. vs. Speed, 192 U. S., 500, 48 L. Ed., 538, 24 Sup. Ct. Rep. 365, was especially relied upon. But that decision did not modify the cases that we have cited. It dealt with a case where a mass of nails and iron wire was collected at Memphis from other States, by a manufacturer, for all purposes; some of the goods to be sold on the spot, some ultimately to be forwarded to purchasers in other States, but no package being consigned to or intended for any special customer, or free from the chance of being sold by a new bargain in Tennessee. *Under such circumstances the goods were liable to taxation in that State.* The distinction between that case and the present does not need further emphasis. In view of the many decisions upon the matter we deem further argument unnecessary to show that the judgment below was wrong."

Rearick vs. Pennsylvania, 203 U. S., 507.

and this Court there held void a city ordinance levying a license tax. That case seems to be authority for the case at bar.

Viewing the tax levy in the *Kehrer* or Georgia case, purely as a tax upon property, it is, of course, valid and sustainable.

Inasmuch as the form of the tax on property, *as property*, is entirely a State question, and not a Federal question, the decisions of the State Court *on property taxes* are accepted as final. In a great many of the Reports of this Court, this view is repeatedly asserted.

If the law of Alabama permitted the taxation of property as a property tax in the form of a license, the Georgia

or Kehrer case would be followed in this case, but it does not so permit. The Alabama Constitution limits the taxes on property to a uniform *ad valorem* rate which may be fixed by the legislature, and while, in addition, the legislative body, under the revenue power, may levy taxes on occupations, this occupation tax is not considered a property tax at all, *but must stand or fall when viewed from the standpoint of occupation taxes as distinguished from property taxes.*

Goldsmith vs. Huntsville, 120 Ala., 184;
City of Anniston vs. So. Ry. Co., 112 Ala., 565.

The provision of the Alabama Constitution is as follows:

"Sec. 211. All taxes levied on property in this State shall be assessed in exact proportion to the value of such property, but no tax shall be assessed upon any debt for rent or hire of real or personal property, while owned by the landlord or hirer during the current year of such rental or hire, if such real or personal property be assessed its full value."

It is obvious that a flat privilege tax of $200.00 per annum for each dealer in keg beer in addition to *paid* licenses as wholesale liquor dealers, is neither a property tax nor "in exact proportion to the value of such property."

The City attorney, arguing for the affirmance of this case, cites the case of

Delamater vs. South Dakota, 205 U. S., 93;
S. C., 51 L. Ed., 724.

which is readily distinguishable from the cases at bar.

In the Delamater case the law construed was a *State statute,* not a municipal ordinance as in the case at bar. The State unquestionably possesses the power, since the enactment of the Wilson Law, to enact police measures concerning intoxicating liquors imported from other States; it could, *as a police measure,* levy a high license tax. The State Supreme Court decided the tax in the Delamater case to have been levied under the police power, *as a measure of regulation,* not taxation, and this Court is concluded by that. Not so in the case at bar. The Alabama Supreme Court did not consider the question whether it was a police measure. Inferentially they admit it is *not* a police measure and only a revenue measure by deciding that the business was an "in-

dependent, *domestic business,*" taxable as such. (See City of Mobile vs. Phillips, 146 Ala., 158; Record page 36 of case No. 113.)

Unlike the Delamater case, the tax in the case at bar is levied under a City ordinance. The City has only such powers as have been delegated to it by its charter, and as above shown, it has no police power over *wholesale* liquor dealers, to which the license tax can be referred.

In its opinion in the Phillips case (Case No. 113, Record page 36, reported 146 Ala., 158, and 40 So. Rep., 826,) the Alabama Supreme Court does not in any wise interpret the tax under discussion as a property tax, since such a view would be in obvious conflict with the State Constitution and a large number of other decisions of the same Court; nor does it attempt to justify the tax under this municipal ordinance as an exercise of police power; it simply declares, in conflict with many decisions of this Court, that the business sought to be taxed is local and not interstate in character.

It is most respectfully submitted that therein the Alabama Supreme Court misapplies the recent decisions of this Court; that under a long and unbroken line of decisions of this Court, the license tax in question is unconstitutional and void, when applied to this case, and that the decision of the Court below should be reversed.

Respectfully submitted,

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Office Supreme Court, U. S.
FILED.
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CLERK

IN THE SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1907.

No. 113.

FERDINAND PHILLIPS, Plaintiff in Error,

VS.

THE CITY OF MOBILE, Defendant in Error.

IN ERROR TO THE SUPREME COURT OF ALABAMA.

Brief of BURWELL BOYKIN BOONE
for the City of Mobile.

PATTERSON, PRINTER, MOBILE.

IN THE SUPREME COURT OF THE UNITED STATES.

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IN ERROR TO THE SUPREME COURT OF ALABAMA.

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STATEMENT OF THE CASE.

This cause originated in the Recorder's Court of the City of Mobile upon an affidavit charging the plaintiff in error with doing business in the City of Mobile as a wholesale beer dealer without taking out and paying the license required by the license ordinance of said city. The plaintiff in error was convicted by the Recorder and appealed the cause to the City Court of Mobile, a court of record and of general jurisdiction. In the City Court of Mobile the plaintiff in error and the defendant in error entered into an agreed statement of facts upon which the cause

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was tried, the Court giving to the jury the general charge to find for the defendant in error. The City of Mobile appealed the cause to the Supreme Court of Alabama, the highest Court of Law and Equity in Alabama, and that Court through its Chief Justice delivered an opinion reversing and remanding the cause to the City Court of Mobile, holding that the defendant in error was liable to the license tax imposed upon him by the City of Mobile as a wholesale beer dealer. (Transcript pages 35 and 36.) The cause was brought here by the plaintiff in error, claiming by assignment of error numbered four (4) (Transcript page 39), that the Supreme Court of Alabama erred in not holding under the plea of the plaintiff in error filed in the City Court of Mobile, and under the facts as agreed upon, that the business described in the statements of facts for the transaction of which a license was demanded in this cause, was inter-state commerce, for the transaction of which the City of Mobile had no authority to charge a license.

Section 43 of the charter of the City of Mobile (Acts of Alabama 1900-1901, page 2342), is as follows: "Be it further enacted, That the said General Council "shall, *besides the tax heretofore authorized*, have au- "thority to assess and collect from all persons and corpor- "ations, trading or carrying on any business, trade or pro- "fession, by an agent or otherwise, within the limits of "said corporation, a license tax, which shall be fixed and "declared each year by ordinance of said corporation and "the license so paid shall be issued and the amount im- "posed shall be collected as may be provided by ordinances "of said corporation; provided, that not more than one "license under this act shall be assessed against or col- "lected from partners trading, or business done under a "firm name; provided, further, that no license shall be "exacted from any mechanic who employs no capital, but

"conducts his trade solely by his own skill and attention "without the aid of employees. A vehicle license may be "imposed in addition to business license, provided that "said license shall apply only to vehicles used in the "transportation of goods or merchandise, and vehicles "used for hire at the public stands. Said General Council "may also by ordinance impose such fines and penalties "within the limitations named in this act as they may "deem advisable for the doing of any business or the car-"rying on of any trade, or the practicing of any profession "by any parties who shall fail to take out such license that "may be imposed by said General Council under the au-"thority conferred by this act; in addition to the license "tax imposed upon livery stables there shall be an addi-"tional license tax not exceeding one dollar for every car-"riage and 50 cents for every buggy owned and used for "hire by such livery stable; except also that for all variety "houses and other places where songs and music or danc-"ing are exhibited, and wines or vinous, malt or spiritu-"ous liquors are sold there may be a license tax to an "amount not less than one hundred and fifty dollars, nor "more than one thousand dollars, except also that for "every circus, with or without a menagerie, there may be "a license tax imposed per day not to exceed one hundred "dollars. But no license of any kind shall be granted ex-"cept to respectable people and for lawful business. *And "the Mayor shall upon satisfactory proof revoke all li-"censes found to be otherwise, and also where the business "is conducted in a disorderly manner or disorder is per-mitted in or about the premises licensed.*"

The license imposed by the City of Mobile was fixed and adopted March 14th, 1904, and is set out in full in the transcript, section 28 refers to the business conducted by the plaintiff in error and is as follows: "28. Breweries, "each person, firm, corporation, dealer, brewer, brewery,

"agent or handler for a brewery, selling beer by the bar-"rel, half barrel or quarter barrel, this clause is not to "include license for wholesale or retail vinous or spiritu-"ous liquors, $200." Section 7 of said license ordinance reads as follows: Be it further ordained, That each and every license in this ordinance declared is due and payable on the fifteenth day of March, 1904, and the Tax Collector will proceed to collect the same. Whenever any person, firm, association, corporation or club or social circle shall fail or refuse after publication of this ordinance to obtain a license under the provisions of the same, he shall be fined in such sum as the recorder may impose not exceeding fifty dollars, nor less than five dollars, for each day's failure to obtain such license." (Transcript bottom page 29).

This cause was submitted for the decision of the City Court of Mobile and a jury upon the following agreed statement of facts as shown by the bill of exceptions (Transcript page 8):

"It is agreed between the parties that for the purpose of trial in this cause, the facts are as follows, and are to be considered as proven by competent evidence:

That the pamphlet attached hereto as Exhibit "A" is a true copy of the ordinance adopted by the Mayor and General Council of the City of Mobile, and that said ordinance and particularly subdivision or subsection 28 thereof is the ordinance, or part of ordinance, for an alleged violation of which this prosecution was instituted; that said exhibit here to is to be considered as having been proven by competent evidence.

That the defendant herein is an individual who resides in Mobile, Alabama, and that he is engaged in the business of being a retail beer dealer, for which, under the exhibit hereto, he has paid the amount of his license

as required by said ordinance for and during the fiscal year, beginning March 15th, 1904, and ending March 14th, 1905; and that said payment having been made, a license therefor was duly issued by the proper authorities of the City of Mobile, authorizing the defendant to carry on the business of retail beer dealer during said time; that the defendant in addition to his other liquor business carried on under authority of said paid license under said ordinance, has likewise but at the same place and with the same employees before the institution of this prosecution in the Recorder's Court, and since March 15th, 1904, been engaged in the business of buying and selling beer in kegs, but only under the following circumstances: That the defendant would by letter or telegram sent from Mobile, Alabama, order from a brewery or breweries owned and conducted by residents and citizens of States other than Alabama, certain quantities of lager beer, which pursuant to said orders, would be shipped by continuous inter-state transportation by said non-residents to the defendant at Mobile, Alabama, in kegs, which kegs were, without other packing, loaded into railroad freight box cars and transported by the railroad companies from said breweries in other States to the defendant at Mobile, Alabama. That said purchases by the defendant were outright, and that the defendant by and through said purchases became the owner of said lager beer, to do with as he pleased; that he paid for it usually after its arrival, but never until a bill of lading for each such shipment so paid for, had been received by the defendant at Mobile; that the packages in which said beer came were invariably kegs of the ordinary, usual and customary, commercial sizes, in which the same is packed for sale and shipment, and that in such usual commercial original packages the same was taken from the cars upon arrival at Mobile, and stored in the storehouse or warehouse of the defendant in

the City of Mobile until sold by the defendant; that the defendant made sales of said kegs in quantities of one or more, to his various customers in and about the City of Mobile and the vicinity thereof, and that such sales were made in contemplation by the defendant of deliveries by the defendant in said kegs as original packages, and the deliveries were thereafter made by delivery wagons owned and operated by the defendant in the City of Mobile to such customers in such original packages. That from the packing and shipment of said beer at the breweries in other States than Alabama until after sale and delivery thereof by the defendant to his various customers in the City of Mobile and the vicinity thereof, none of said kegs as original packages ever became broken or open, but the deliveries by the defendant to his respective customers of said beer was always in the same original, usual, commercial packages in which the same were packed and shipped from the breweries in said foreign States. That each and all of the kegs herein mentioned contained more than one quart of beer. That this mode of business has been conducted by the defendant since March 15th, 1904, and still continues, and that except as is herein above stipulated, the defendant, neither as a brewer, brewery agent or handler has ever sold beer by the barrel, half barrel or quarter barrel, in the City of Mobile, Alabama, since March 15th, 1904. That nearly fifty per cent. of all the offenses against the ordinances of the City of Mobile, ordained to secure peace and order, are brought about by the use of intoxicating liquors. Neither the license sued for nor the fine assessed by the Recorder has been paid." (Transcript pages 8, 9 and 10).

In the license ordinance made a part of the agreed statement of facts in this case is found (Transcript page 28) the following:

"Section 3. Be it further ordained, That any person desiring to engage in any trade, business or occupation, or any club or social circle, which desires to sell or otherwise dispose of liquors to its members, although not engaged in such sale or disposition of such liquors as a business, shall designate the place at which such trade, business or occupation or where such club or social circle desires to sell or otherwise dispose of liquors to its members, is to be carried on, and a license to be issued hereunder, shall designate such place, and such license shall authorize the carrying on of such trade, business or occupation, or authorize such club or social circle not engaged in business to dispose of liquors to its members only at such designated place. For each place at which such trade, business or occupation is carried on, or where a club or social circle so sells or disposes of liquors to its members, a separate license shall be required to be issued and for which a separate license tax shall be paid."

ARGUMENT.

The agreed facts conclusively show that when the beer in kegs was delivered by the carrier in the city of Mobile to the plaintiff in error it was his property; that it was bought in States other than Alabama, and was the property of the plaintiff when his order was accepted by a brewer outside of the State of Alabama. That the beer was bought for the purpose of being sold, and after delivery to plaintiff in error by the railroad company was stored in his warehouse in Mobile, and sold from there to various customers throughout the City of Mobile and delivered to them by means of wagons. It will be observed that the license complained of makes no distinction between residents and non-residents, or discrimination between breweries in the State of Alabama, and breweries

in States other than Alabama. Obviously the business as conducted by the plaintiff in error within the City of Mobile was domestic business. In carrying on his business the plaintiff in error did so in the same manner and was not distinguishable from the local breweries. The decision of this Court in the case of Kehrer vs. Stewart, 197 U. S., page 60, seems clearly against the contention of the plaintiff in error, that he was engaged in business protected from the imposition of a license by the commerce clause of the federal constitution. In that case Mr. Justice Brown for the Court said: "In carrying on the domestic business, petitioner was indistinguishable from the ordinary butcher, who slaughters cattle and sells their carcasses, and in principle it made no difference that the cattle were slaughtered in Chicago and their carcasses sent to Atlanta for sale and consumption in the ordinary course of trade. Upon their arrival there they became a part of the taxable property of the State. It made no difference whence they came and to whom they were ultimately sold, or whether the domestic and interstate business were carried on in the same or different buildings." The carcass of an animal shipped for food from one state to another is an original package just as much as beer enclosed in a keg and shipped from one State to another is an original package, hence, we cannot see in principle why the food product should be held to be liable to the license and the article of drink not.

In the case of the American Steel and Wire Company vs. Speed, 192 U. S., at page 519, Mr. Justice White in a luminous opinion points out that since the decision in Brown vs. Maryland, 12 Wheaton 436, it has not been an open question that the States had no power to tax imports from foreign countries while the goods remained in the original packages. And that where the goods were brought from one State of the Union to another State and

delivered to the consignee they were not imported in the legal sense and were subject to State taxation after they had reached their destination, and whilst held in the State for sale. "This is as conclusively foreclosed (says Mr. Justice White) by the decisions of this Court as the doctrine resting upon the decision in Brown vs. Maryland. Woodruff vs. Parham, 8 Wallace, 123; Brown vs. Houston, 114 U. S., 622.

"The doctrine upon which the cases rests was this,—that imports in the constitutional sense, embrace only goods brought from a foreign country, and consequently do not include merchandise shipped from one State to another. The several States, therefore, not being "con-"trolled as to such merchandise by the prohibition against "the taxation of imports, it was held that the States had "the power, after the goods had reached their destination "and were held for sale, to tax them, without discrimina-"tion, like other property situated within the State."

In the case of Pabst Brewing Company vs. Crenshaw, 198 United States, at page 30, Mr. Justice White referring to the Wilson act, for this Court said: "The manifest purpose of the act of Congress "was to subject original packages to the regu-"lations and restraints imposed by the State law. If the "purpose of the act had been to allow the State law to "govern the sale of the original package only where the "sale of all liquor had been forbidden, this object could "have found ready expression, whilst, on the contrary, "the entire context of the act manifests the purpose of "Congress to give to the respective States full legislative "authority, both for the purpose of prohibition, as well as "for that of regulation and restriction with reference to "the sale in original packages of intoxicating liquors "brought in from other States."

In Delamater vs. South Dakota, 205 United States, at page 98, Mr. Justice White for this court said: "It is "settled by a line of decisions of this Court, noted in the "margin, that the purpose of the Wilson act, as a regula- "tion by Congress of interstate commerce, was to allow "the States, as to intoxicating liquors, when the subject " of such commerce, to exert ampler power than could "have been exercised before the enactment of the statute. "In other words, that Congress, sedulous to prevent its ex- "clusive right to regulate commerce from interfering with "the power of the States over intoxicating liquor, by the "Wilson act adopted a special rule enabling the States to "extend their authority as to such liquor shipped from "other States before it became commingled with the mass "of other property in the State by a sale in the original "package." Plaintiff in error contends that the City of Mobile has no authority to regulate the sale of beer stored in his warehouse in said city in the original package, and yet this Court held in the case of Delamater vs. South Dakota, 205, United States 93, that a State may prohibit the carrying on within its borders of the business of scliciting orders for intoxicating liquor although such orders may only contemplate a contract resulting from final accept- ance in another State. In the last case cited this Court said, page 99, "That act, as we have seen, manifested the "conviction of Congress that control by the States over "the traffic of dealing in liquor was of such importance "that it was wise to adopt a special regulation of inter- "state commerce on the subject. When, then, for the "carrying out of this purpose the regulation expressly pro- "vided that intoxicating liquors coming into a State "should be as completely under the control of a State as if "the liquor had been manufactured therein, it would be, "we think, a disregard of the purposes of Congress to

"hold that the owner of intoxicating liquors in one State "can, by virtue of the commerce clause, go himself or send "his agent into such other State, there in defiance of the "law of the State, to carry on the business of soliciting "proposals for the purchase of intoxicating liquors."

The plaintiff in error also contends that the license imposed was not a police regulation but was enacted to raise revenue and for no other purpose. We insist that the Supreme Court of Alabama in this case, 146 Alabama, page 158 (Transcript page 36) held that the license imposed was a business or privilege license. Chief Justice Weakley for the Supreme Court of Alabama, said: "It is contended for appellee that section 43 of the charter of Mobile (Acts of Alabama 1901, page 2342 et seq.) operates to exempt him from taking out a license for selling beer by the barrel, etc., because he had already obtained a license as a retail beer dealer. We think there is no merit in this contention. The section of the charter relied on provided "that more than one license under this act shall not be assessed against or collected from partners trading or business done under a firm name." Appellee was enjoying two separate privileges, and unless some other valid reason may be found to exempt him, should procure a license for each. The section quoted was intended merely to authorize a partnership or firm business, in which several persons are interested, to be conducted upon payment of one license." However this Court may construe this language we insist that the contention that the ordinance is a taxing law and not a police regulation is put at rest by the decisions of this Court in Pabst Brewing Company vs. Crenshaw, 198, United States, at page 27, and by the concluding sentence in Delamater vs. South Dakota, 205 U. S., at page 104, where it is said speaking of a similar contention: "Besides, the contention is fore-

closed by the ruling of this Court in Pabst Brewing Company vs. Crenshaw, supra."

We respectfully urge that the decision of the Supreme Court of Alabama was correct and should be affirmed.

Respectfully submitted,

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